

Before the
Federal Communications Commission
Washington, D.C. 20554

DEC 24 2002

In the Matter of)	
)	
Application by BellSouth Corporation,)	
BellSouth Telecommunications, Inc., and)	WC Docket No. 02 – 307
BellSouth Long Distance, Inc., for)	
Authorization To Provide In-Region,)	
InterLATA Services in Florida and Tennessee)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: December 18, 2002

Released December 19, 2002

By the Commission: Chairman Powell and Commissioner Copps issuing separate statements;
Commissioner Adelstein not participating.

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1. On September 20, 2002, BellSouth Corporation and its subsidiaries, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. (collectively, BellSouth) filed an application pursuant to section 271 of the Communications Act of 1934, as amended,¹ for authority to provide in-region, interLATA service originating in the states of Florida and Tennessee.² We grant BellSouth's application in this Order based on our conclusion that BellSouth has taken the statutorily required steps to open its local exchange markets in these states to competition. BellSouth therefore becomes the first Bell Operating Company (BOC) to obtain section 271 authority for interLATA service throughout its region.³

2. In ruling on BellSouth's application, we wish to acknowledge the effort and dedication of the Florida Public Service Commission (Florida Commission) and the Tennessee Regulatory Authority (Tennessee Authority) (collectively, state commissions), both of which

¹ We refer to the Communications Act of 1934, as amended, as the Communications Act or the Act. See 47 U.S.C. §§ 151 *et seq.*

² See Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Florida and Tennessee, WC Docket No. 02-307 (filed Sept. 20, 2002) (BellSouth Application); see also Comments Requested on the Joint Application by BellSouth Corporation for Authorization under Section 271 of the Communications Act to Provide In-Region InterLATA Service in the States of Florida and Tennessee, WC Docket No. 02-307, Public Notice, 17 FCC Rcd 17435 (Wireline Comp. Bur. 2002).

³ See Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina, WC Docket No. 02-150, Memorandum Opinion and Order, 17 FCC Rcd 17595 (2002) (BellSouth Multistate Order); Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Georgia and Louisiana, CC Docket No. 02-35, Memorandum Opinion and Order, 17 FCC Rcd 9018 (2002) (BellSouth Georgia/Louisiana Order).

have expended significant time and effort overseeing BellSouth's implementation of the requirements of section 271. The **state** commissions conducted proceedings to determine BellSouth's section 271 compliance and provided interested third parties with ample opportunities for participation in their proceedings. The state commissions also adopted a broad range of performance measures and standards, as well as Performance Assurance Plans designed to create financial incentives for BellSouth's post-entry compliance with section 271.⁴ Moreover, the state commissions have committed themselves to actively monitor BellSouth's continuing efforts to open the local markets to competition. The Commission recognizes the vital role of the state commissions in conducting section 271 proceedings and their commitment to furthering the pro-competitive purposes of the Act.' We commend and thank these *two* states for the time and effort they spent investigating the merits of this application.

3. We also recognize BellSouth for the progress it has made in opening its local exchange markets to competition in the states subject to **this** application. According to BellSouth, competitive local exchange carriers (competitive LECs) provide facilities-based local service to 1,217,756 lines in Florida,⁵ and 330,319 lines in Tennessee.⁶ In addition, BellSouth states that competitive LECs have gained double-digit market share in Florida (18.4 percent) and

⁴ The performance metrics measuring BellSouth's performance in Tennessee were calculated according to the business rules (based upon the BellSouth Service Quality Measurement Plan or SQM) developed by the Georgia Public Service Commission (Georgia Commission). See BellSouth Application App. A, Vol. 6a, Tab K, Affidavit of Alphonso J. Vamer (BellSouth Vamer Aff.) at para. 5. In Florida, the performance metrics the Florida Commission relied upon in reviewing BellSouth's performance were calculated according to the ~~Interim~~ Florida SQM measurements based on, and virtually identical to, the Georgia SQM. BellSouth Application Reply App., Tab I, Reply Affidavit of Alphonso J. Vamer (BellSouth Vamer Reply Aff.) at para. 76. On September 10, 2001, the Florida Commission established permanent performance measures (Florida Permanent SQM). BellSouth Vamer Aff. at para. 157. Since May 2002, BellSouth has been reporting data in Florida pursuant to the Florida Permanent SQM. BellSouth Vamer Reply Aff. at para. 77. On August 29, 2002, the Tennessee Authority approved a settlement agreement requesting the adoption of performance measures based on the Florida Permanent SQM. BellSouth Vamer Aff. at paras. 230-31. BellSouth stated that it began operating under the permanent Tennessee plan on December 1, 2002. Letter from Kathleen B. Levitz, Vice President - Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-370 (filed Dec. 3, 2002) (BellSouth Dec. 3 *Ex Parte* Letter - #1); see also BellSouth Vamer Aff. at para. 231.

⁵ See, e.g., *Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Connecticut*, CC Docket No. 01-100, Memorandum Opinion and Order, 16 FCC Rcd 14147, 14149, para. 3 (2001) (*Verizon Connecticut Order*); *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, Memorandum Opinion and Order, 16 FCC Rcd 8988, 8990, para. 2 (2001) (*Verizon Massachusetts Order*).

⁶ BellSouth Application Reply App. A, Tab H, Reply Affidavit of Elizabeth A. Stockdale (BellSouth Stockdale Reply Aff.) at para. 6.

⁷ See *id.* at para. 7.

Tennessee (12.6 **percent**).⁸ We note **also** that BellSouth states that **as** of July 31, 2002, BellSouth had provisioned 166,168 loops in Florida and 50,886 loops in Tennessee?

II. BACKGROUND

4. In the 1996 amendments to the Communications Act, Congress required the BOCs to demonstrate compliance with certain market-opening requirements contained in section 271 of the Act before they would be permitted to provide in-region, interLATA long distance service. Congress empowered the Commission to review BOC applications to provide such service, and to consult with the affected states and the Attorney General."

5. We rely heavily in **our** examination of this application on the work completed by the Florida Commission and the Tennessee Authority. On March 6, 2001, the Florida Commission initiated a proceeding open to participation by all interested parties to review BellSouth's satisfaction of the requirements necessary to provide in-region, interLATA service in Florida." In September 2002, the Florida Commission unanimously adopted the staff recommendation and determined that BellSouth had met each and every checklist **requirement**.¹²

6. On April 26, 2002, BellSouth notified the Tennessee Authority of its intent to file an application to provide interLATA telecommunications services **in** Tennessee." In response,

⁸ See *id* at paras. 6-7.

⁹ BellSouth Application at 84.

¹⁰ The Commission has summarized the relevant statutory framework in prior section 271 orders. See, e.g., *Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6241-42, *para.* 7-10 (2001) (*SWBT Kansas/Oklahoma Order*), *aff'd in part, remanded in part sub nom. Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001) (*Sprint v. FCC*).

¹¹ Letter from Lila A. Jaber, Chairman, Florida Public Service Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission at 2 (Sept. 25, 2002) (transmitting the Florida Commission Comments); Consideration of BellSouth Telecommunications, Inc.'s entry into interLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996 (Hearing), Docket No. 960786A-TL (Sept. 25, 2002) (Florida Commission Comments – Hearing); Consideration of BellSouth Telecommunications, Inc.'s entry into interLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996 (Third Party OSS Testing), Docket No. 960786B-TL (Sept. 25, 2002) (Florida Commission Comments – OSS Test) (collectively, Florida Commission Comments). On June 28, 1996, the Florida Commission opened its initial inquiry into the entry of BellSouth into the interLATA telephone market in Florida. Florida Commission Comments – Hearing at 10. However, on November 19, 1997, the Florida Commission determined that BellSouth had not met all of the checklist items. *Id.* at 10-11. Accordingly, BellSouth refiled its application on March 6, 2001. *Id.* at 11.

¹² Florida Commission Comments – Hearing at 211, Florida Commission Comments – OSS Test at 86, BellSouth Application at 9. *But see* Arvanitas Reply.

¹³ Tennessee Authority Comments at IS. We note that this was BellSouth's third application before the Tennessee Authority for authorization to provide in-region, interLATA services in Tennessee. BellSouth previously applied for section 271 approval for Tennessee in December 1997 and then again July 2001. *Id.* at 14-18.

the Tennessee Authority initiated a proceeding, which was open to participation by all interested parties, to examine BellSouth's compliance with the requirements of section 271.¹⁴ At the suggestion of the Tennessee Authority, BellSouth and competitive LECs initiated settlement discussions.¹⁵ Subsequently, the parties reached a settlement agreement concerning outstanding issues in the section 271 docket,¹⁶ and the Tennessee Authority approved it.¹⁷ On August 26, 2002, by separate vote on each checklist item, the Tennessee Authority determined that "BellSouth had satisfied all aspects of the competitive checklist, as well as Track A and section 272."¹⁸

7. The Department of Justice filed its recommendation regarding this joint application on October 25, 2002.¹⁹ The Department of Justice recommends approval of BellSouth's application for section 271 authority in Florida and Tennessee, subject to the Commission's resolving certain concerns expressed by the Department of Justice, specifically, BellSouth's change management process,²⁰ and its policy on restating erroneously reported performance data.²¹

111. COMPLIANCE WITH SECTION 271(c)(1)(A)

8. As a threshold matter, we address BellSouth's compliance with section 271(c)(1)(A), which requires, as a prerequisite for any approval of a BOC's application to provide in-region interLATA services, that a BOC first demonstrate that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B).²² To qualify for Track A, a BOC must have interconnection agreements with one or more competing

¹⁴ *Id.* at 18.

¹⁵ *Id.* at 19-20.

¹⁶ *Id.* at 20. Parties that did not join the settlement agreement either withdrew from the proceedings or concurred in the parties' agreement to submit the case to the panel for a decision based on the current record. *Id.* at 20.

¹⁷ *Id.* at 22-23. Consistent with the settlement agreement, the Tennessee Authority adopted on an interim basis the performance measures and penalty plan approved in Georgia, and adopted as the permanent performance measures and penalty plan those approved in Florida as the Florida Permanent SQM. *Id.* at 21.

¹⁸ BellSouth Application at 11-12.

¹⁹ Section 271(d)(2)(A) requires us to give "substantial weight" to the Department of Justice's evaluation.

²⁰ The Department of Justice indicated four areas of concerns: 1) BellSouth's adherence to competitive LECs' prioritized change requests; 2) BellSouth's provision of sufficient capacity to implement competitive LEC change requests; 3) BellSouth's provision of adequate pre-release testing of OSS changes; and 4) review of OSS changes implemented for BellSouth retail to assure that they do not result in discriminatory access. Department of Justice Evaluation at 2, 6-10.

²¹ The Department of Justice expressed concern that the reposting policy does not clearly state which errors are to be restated and that the policy could impact the accuracy of BellSouth's performance data. *Id.* at 9-10.

²² 47 U.S.C. § 271(d)(3)(A).

providers of “telephone exchange service . . . to residential and business subscribers.”²³ The Act states that “such telephone service may be offered . . . either exclusively over [the competitor’s] **own** telephone exchange service facilities or predominantly over [the competitor’s] own telephone exchange facilities in combination with the resale of the telecommunications services of another **carrier**.”²⁴ The Commission has concluded that section 271(c)(1)(A) is satisfied if one or more competing providers collectively serve residential and business subscribers,²⁵ and that unbundled network elements **are** a competing provider’s “**own** telephone exchange service facilities” for purposes of section 271(c)(1)(A).²⁶ The Commission **has** further held that a BOC must show that at least one “competing provider” constitutes “an actual commercial alternative to the BOC,”²⁷ which a BOC can do by demonstrating that the provider serves “more than a de *minimis* number” of subscribers.²⁸ The Commission **has** interpreted Track A not to require any particular level of market penetration, however, and the United States Court of Appeals for the D.C. Circuit (D.C. Circuit Court) has affirmed that the Act “imposes no volume requirements for satisfaction of Track A.”²⁹

9. We conclude, **as** did the state commissions, that BellSouth satisfies the requirements of Track A in Florida and Tennessee.” No commenter challenges BellSouth’s

²³ 47 U.S.C. § 271(c)(1)(A)

²⁴ *Id.*

²⁵ *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended To Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Red 20543, 20589, para. 85 (1997) (*Ameritech Michigan Order*); *see also Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, 13 FCC Red 20599, 20633-35, paras. 46-48 (1998) (*Second BellSouth Louisiana Order*).

²⁶ *Ameritech Michigan Order*, 12 FCC Red at 20598, para. 101.

²⁷ *Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Oklahoma*, CC Docket No. 97-121, Memorandum Opinion and Order, 12 FCC Red 8685, 8695, para. 14 (1997) (*SWBT Oklahoma Order*).

²⁸ *SWBT Kansas/Oklahoma Order*, 16 FCC Red at 6257, para. 42; *see also Ameritech Michigan Order*, 12 FCC Red at 20585, para. 78.

²⁹ *Sprint v. FCC*, 274 F.3d at 553-54; *see also SBC Communications Inc. v. FCC*, 138 F.3d 410, 416 (D.C. Cir. 1998) (“Track A does not indicate just **how** much competition a provider must offer either the business or residential markets before it is deemed a ‘competing’ provider.”).

³⁰ Florida Commission Comments – Hearing at 34; *see also* Tennessee Authority Comments at 23.

showing in this respect?’ With respect to these states, BellSouth relies on interconnection agreements with AT&T, Knology, MCI and US LEC in support of its Track A **showing**.³²

10. We find that both AT&T and Knology in Florida, and both MCI and US LEC in Tennessee each serve more than a de *minimis* number of end users predominantly over their **own** facilities and represents an “actual commercial alternative” to BellSouth in Florida and Tennessee respectively.” Specifically, each provides telephone exchange service to both residential and business subscribers through its **own facilities**.³⁴

IV. PRIMARY ISSUES IN DISPUTE

11. In a number of prior orders, the Commission discussed in considerable detail the analytical framework and particular legal showing required to establish checklist compliance.)’ In this Order, we rely upon the legal and analytical precedent established in those prior orders. In addition, we include comprehensive appendices containing the applicants’ performance data and the statutory framework upon which we rely when considering for analysis section 271 **applications**.³⁶ In reviewing this application, we examine performance data as reported in monthly performance reports reflecting service in the period from May, 2002, through September, 2002.

12. We focus in this Order on the issues in controversy in the record. Accordingly, we begin by addressing the evidentiary case, followed by checklist item two (unbundled network elements, or UNEs). Next, we address the following checklist items: checklist item one (interconnection), checklist item four (unbundled local loops), checklist item eleven (local number portability), and checklist item thirteen (reciprocal Compensation). The remaining

³¹ *But see* Arvanitas Reply at 4. By alleging BellSouth breached the interconnection agreement with IDS Telecom, LLC, Arvanitas recognizes that the interconnection agreement exists, an implicit acknowledgement that BellSouth has satisfied Track A.

³² BellSouth Application at 12-13; BellSouth Application App. A, Vol. 6a, Tab J, Affidavit of Elizabeth A. Stockdale (BellSouth Stockdale Aff.) at paras. 19 and 31, and Tables 2 and 5.

³³ BellSouth Stockdale Aff. at para. 19; BellSouth Stockdale Aff., Exs. ES-5, ES-6, ES-8, and ES-9 (*citing confidential information*). *See also* SWBT Oklahoma Order, 12 FCC Rcd at 8695, para. 14.

³⁴ BellSouth Stockdale Aff., Exs. ES-5, ES-6, ES-8, and ES-9 (*citing confidential information*).

³⁵ *See, e.g., Application by SBC Communications, Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance pursuant to Section 271 of the Telecommunications Act of 1996, To Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18359-61, 18365-78, paras. 8-11, 21-40, 43-58 (2000) (SWBT Texas Order); *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953, 3961-63, 3966-69, 3971-76, paras. 17-20, 29-37, 43-60 (1999) (Bell Atlantic New York Order), *aff’d sub nom. AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000); *see also* Appendix D.

³⁶ *See generally* Appendices B, C, and D.

checklist items, 3, 5, 6-10, 12, and 14 are discussed briefly, **as** they received little or no attention from commenting parties. Finally, we discuss issues concerning compliance with section 272 and the public interest requirements.

A. Evidentiary Case

13. As a threshold matter, we address the performance metrics and standards that we use in the instant application to make findings of checklist compliance. The state commissions of states for which we have previously approved in-region long distance authority for BellSouth have generally **used** either the Georgia performance metrics (Georgia SQM) or metrics based on or substantially similar to the Georgia SQM. In the instant application, the Tennessee Authority based its evaluation on the Georgia **SQM**,³⁷ and the Florida Commission used the interim Florida SQM, modeled on the Georgia SQM, for its third-party test and for purposes of determining BellSouth's section 271 **compliance**.³⁸ The Florida Interim SQM is nearly identical to the Georgia SQM except for minor differences in some standards **and/or** levels of disaggregation in the collocation and change management **measures**.³⁹ Although we recognize that the Florida Commission established the Florida Permanent SQM in 2001, and BellSouth began reporting data under this SQM in May 2002, we do not consider this SQM for purposes of the instant analysis." We find it reasonable to use the Florida Interim SQM because **this** is what the Florida Commission used and it will enable us to conduct a more "apples-to-apples" evaluation of BellSouth's performance. Similarly, we used substantially the same measures and standards to evaluate BellSouth's performance in the past seven applications. By using the Florida Interim SQM we can best evaluate whether BellSouth has maintained its performance or whether performance has deteriorated. Significantly, we note that no commenter has suggested that it is inappropriate for us to rely on the Florida Interim SQM. Accordingly, we rely on the performance data in the Florida Interim SQM filed with the application for assessing BellSouth's section 271 compliance in Florida.

³⁷ The Tennessee Authority **used** the Georgia **SQM** for purposes **of** assessing BellSouth's compliance with section 271. Tennessee Authority Comments at **21-22, 27**.

³⁸ *See infran.4.*

³⁹ BellSouth Varner Aff. at paras. **108, 157**; BellSouth Varner Reply Aff. at para. **76**.

⁴⁰ The Florida Permanent **SQM**, when compared to the Georgia **SQM**, reflects the addition of some new measures and the deletion of others, changes to certain business rules, more stringent benchmarks in some cases and changes to the level of disaggregation reported. For example, for ordering and provisioning measures, the Florida Commission ordered the addition of metrics for UNE Line Splitting and Enhanced Extended Loops (EELs). For ordering and maintenance and repair, the Florida Commission also required the addition of metrics for digital and high capacity loops. *See* BellSouth Varner Aff. at paras. **123, 157-58, 164-65**; BellSouth Varner Reply Aff. at para. **76**; Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket **No. 02-307** Attach. at **1-2** (filed Oct. **17, 2002**) (BellSouth Oct. **17 Ex Parte** Letter – **#1**); *see also BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at **9027**, para. **16**; *BellSouth Multistate Order*, 17 FCC Rcd at **17600, 17605**, paras. **12, 19**.

14. We also address challenges to the validity of the data submitted by BellSouth. The accuracy of BellSouth's performance data is essential to its showing of compliance with several different checklist items. Accordingly, it is appropriate for us to dispose of this threshold issue before addressing BellSouth's compliance with each checklist item.⁴¹ The Department of Justice and AT&T maintain that BellSouth's data reposting policy (i.e., when BellSouth revises published performance data results) would allow BellSouth to hide errors in its performance data, thus bringing the reliability of the data into question.⁴² BellSouth's policy had excluded the reposting of errors not involving "key performance measures," as defined by BellSouth. Further, BellSouth's policy required a trigger of at least 100 transactions in a given month before some types of errors would be reposted.⁴³

15. Although BellSouth correctly points out that it is under no obligation to repost performance data, BellSouth has revised its reposting policy to include all performance measures that a state commission currently includes in its Service Performance Measurements and Enforcement Mechanisms (SEEM) Plan and BellSouth anticipates modifying the policy in the future in response to changes made to a state's SEEM Plan.⁴⁴ We note that restrictions relating to the number of transactions remain in place. In addition, on December 1, 2002, BellSouth began disclosing all known and validated data issues, including those with less than 100 transactions, by filing at all state commissions in its region a list of validated errors affecting results that are not captured on a data notification or by reposting.⁴⁵ BellSouth also commits to filing its

⁴¹ The Commission has discussed the importance of data validity issues in a number of orders. See e.g., *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9027, para. 16.

⁴² AT&T argues that BellSouth should be required to repost all errors because BellSouth's reposting policy would hamper the ability of competitive LECs, state regulatory authorities, and the Commission to effectively evaluate BellSouth's performance. AT&T Comments at 15-16; AT&T Comments App., Tab B, Declaration of Sharon E. Noms (AT&T Noms Decl.) at paras. 3-10; AT&T Reply at 18-25; Letter from Jodi S. Sirotnak, Regulatory Analyst, Federal Government Affairs, AT&T, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-307 (filed Nov. 19, 2002) (AT&T Nov. 19 Ex Parte Letter); Letter from R. Merinda Wilson, Counsel to AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-307 (filed Dec. 2, 2002) (attaching Joint Supplemental Declaration of Cheryl Bursh, Sharon E. Noms, and Robert M. Bell at para. 25) (AT&T Bursh/Norris/Bell Supp. Decl.). The Department of Justice also raised concerns about the effect of the policy on the accuracy of BellSouth's reported performance data and whether the policy could reduce the value of performance reporting as an ongoing mechanism for measuring performance and preventing backsliding. Department of Justice Evaluation at 9-10.

⁴³ For key measures, reposting would always occur if the correction would shift a performance measures 60m "in parity" to "out of parity." Key measures that have been out of parity would be reposted if there were at least 100 competitive LEC transactions at the sub-metric level, and there was at least a two percentage point change in the performance for benchmark measures or a 0.5 change in the z-score for retail analogue measures. See Letter from Jonathan B. Banks, General Attorney, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-307 Attach. at 1-2 (filed Oct. 17, 2002) (BellSouth Oct. 17 Ex Parte Letter - #3).

⁴⁴ BellSouth Reply at 30-31; BellSouth Varner Reply Aff. at para. 23; BellSouth Vamer Reply Aff., Ex. PM-20.

⁴⁵ BellSouth Reply at 5, 30; BellSouth Vamer Reply Aff. at para. 14; Letter from Kathleen B. Levitz, Vice President - Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-307 at 1 (filed Nov. 13, 2002).

modified reposting policy with the Georgia, Florida, and Louisiana Commissions in their upcoming six-month review proceedings.⁴⁶

16. Based on the record in **this** proceeding, we are satisfied that the data BellSouth submitted with the instant application are reliable and accurate. We reach this conclusion based on the extensive third party auditing, the internal and external data controls, the availability of raw performance data to competing carriers and regulators, BellSouth's readiness to engage in data reconciliations, and the oversight and review of the data and of proposed changes to the metrics provided by state commissions." We further expect that, to the extent BellSouth becomes aware of errors in its data that would affect our analysis of the instant application, it would alert us to such errors **as soon as** it becomes aware of them." We are prepared to pursue appropriate enforcement action if evidence becomes available to the Commission sufficient to show that incorrect data were submitted to the Commission in violation of Commission rules.⁴⁹ We encourage the state commissions in BellSouth's territory to continue their review of BellSouth's reposting policy, particularly the impact of the 100 transaction reposting trigger on monitoring BellSouth's performance, the omission of some performance measures **from** the reposting policy, and the potential impact of the reposting policy on penalty payments?"

17. We disagree with Network Telephone's suggestion that we should question the validity of BellSouth's Performance Measurement Analysis Platform (PMAP) data" because of restatements in BellSouth's SEEM payments to Network Telephone.⁵² BellSouth argues that validation procedures suggested errors in its preliminary SEEM payments to Network Telephone, and that BellSouth made **full** payment to Network Telephone even **though** it is still investigating the reason for its relative poor performance.⁵³ Competitive LECs can request **an** audit of the

⁴⁶ BellSouth Reply at 31; BellSouth Varner Reply Aff. ~~at~~ para. 9.

⁴⁷ BellSouth Varner Aff. at paras. 39-68; BellSouth Varner Reply Aff. at paras. 5, 29, 45, 47-66. *See also BellSouth Multistate Order*, 17 FCC Rcd at 17604, para. 16; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9030, para. 19.

⁴⁸ 47 C.F.R. §1.65. BellSouth acknowledges that it is bound by this rule. BellSouth Varner Reply Aff. at para. 11.

⁴⁹ We also note that submission of false data to the Commission could subject BellSouth to Criminal prosecution under 18 U.S.C. § 1001.

⁵⁰ BellSouth Varner Reply Aff. at paras. 20-21. *But see* AT&T Bursh/Norris/Bell Supp. Decl. at paras. 28-54.

⁵¹ PMAP is the software program in which the majority of the **SQM** values are produced. BellSouth Varner Aff. at paras. 33-36.

⁵² Network Telephone Comments at 9-10. Network Telephone also complains that BellSouth no longer reports data that Network Telephone had been using to determine what data was excluded **from** the trouble duration metric. Network Telephone Comments at 9. Although we noted in *BellSouth Georgia/Louisiana Order* that BOCs do not routinely make their **raw** data available, BellSouth plans to respond to this complaint **by** providing a data file to competitive **LECs** with the excluded records during the **first** quarter of 2003. BellSouth Varner Reply Aff. at paras. 25-28; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9032 n.71.

⁵³ BellSouth Varner Reply Aff. at paras. 41-46.

SEEM payments under the SEEM provision for an annual audit of payments, and KPMG is currently performing an independent, extensive end-to-end audit of the underlying SEEM data, SEEM calculations and SEEM payments.⁵⁴ We find that there are sufficient mechanisms to assure the validity of BellSouth's SEEM payments, and thus the facts asserted by Network Telephone do not demonstrate that BellSouth's data are invalid?

B. Checklist Item 2 – Unbundled Network Elements

18. Checklist item 2 of section 271 states that a BOC must provide “nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)” of the Act.⁵⁶ Section 251(c)(3) requires incumbent LECs to provide “nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.”⁵⁷

1. Pricing of Unbundled Network Elements

19. Section 252(d)(1) provides that a state commission's determination of *the* just and reasonable rates for network elements must be nondiscriminatory, based on the cost of providing the network elements, and may include a reasonable profit.” Pursuant to this statutory mandate, the Commission **has** determined that prices for UNEs must be based on the total element long run incremental cost (TELFUC) of providing those **elements**.⁵⁹

⁵⁴ *Id.* at para. 45.

⁵⁵ Mpower **asserts** that its ability to determine whether BellSouth provides it with parity access to its network elements is hampered by BellSouth's reporting methods, which Mpower believes diminish its ability to compare and track performance trends. We concur with BellSouth that this complaint is more appropriately addressed in a state *six* month review process. Mpower Comments at 16-17; Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket **No.** 02-307 at 2-3 (filed Oct. 25, 2002) (BellSouth Oct. 25 *Ex Parte* Letter – #2); BellSouth Varner Reply Aff. at paras. 27-40.

⁵⁶ 47 U.S.C. § 271(c)(2)(B)(ii). Overturning a 1997 decision of the Eighth Circuit Court of Appeals, on May 13, 2002, the **U.S.** Supreme Court upheld sections 51.315(c)-(f) of the Commission's rules, which, subject to certain **limitations**, require incumbent LECs to provide combinations of unbundled network elements “not ordinarily combined in the incumbent LEC's network” and to “combine unbundled network elements with the elements possessed by the requesting telecommunications carrier.” *Verizon Communications, Inc. v. FCC*, 122 S. Ct. 1646 (2002). In a prior decision, the Supreme Court upheld the Commission's authority to adopt sections 51.315(a)-(b) of the Commission's rules, which establish the general obligation of an incumbent LEC to provide combinations of network elements and require **an** incumbent LEC not to separate requested elements that it currently combines, except upon request. *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 385, 393-95 (1999). **No** commenter raises concerns about UNE combinations.

⁵⁷ 47 U.S.C. § 251(c)(3)

⁵⁸ 47 U.S.C. § 252(d)(1).

⁵⁹ *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket **No.** 96-98, First Report and Order, 11 FCC Rcd 15499, 15844-47, paras. 674-79 (1996) (*Local Competition Order*); (continued..)

20. In applying the Commission's TELRIC pricing principles in **this** application, we do not conduct a *de novo* review of a state's pricing **determinations**.⁶⁰ We will, however, reject an application if "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce."⁶¹ We note that different states may reach different results that are each within the range of what a reasonable application of TELRIC principles would produce. Accordingly, an input rejected elsewhere might be reasonable under the specific circumstances here.

21. Commenters in these proceedings assert several challenges to BellSouth's pricing that were never raised before the state commissions. Just **as** it is impractical for us to conduct a *de novo* review of the state commissions' pricing determinations, it is likewise generally impractical for us to make determinations about issues that were not specifically raised before the state commissions in the first instance. During the course of their UNE pricing proceedings, the state commissions are able to cross examine witnesses, compel discovery, and direct the submission of additional record evidence on particular issues. This Commission lacks the time to employ such tools during the course of the 90-day statutory review period for section 271 applications. Without the means to test and evaluate evidence during this short statutory review period, and without a state record to analyze with respect to issues not raised before the state commissions, we are often left to resolve factually complex issues based simply on the untested written assertions of various experts.

22. As the Commission's previous decisions make clear, **a** BOC may submit **as** part of its *prima facie* case a valid pricing determination from a state commission." In such cases, we will conclude that the BOC meets the TELRIC pricing requirements of section 271," unless we find that the determination violates basic TELRIC principles or contains clear errors of fact on matters so substantial that the end result falls outside the range that a reasonable application of

(Continued from previous page)

47 C.F.R. §§ 51.501-51.515. The Supreme Court has upheld the Commission's forward-looking pricing methodology in determining the costs of UNES. *Verizon v. FCC*, 122 S.Ct. at 1679.

⁶⁰ *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Memorandum Opinion and Order, 16 FCC Rcd 17419, 17453, para. 55 (2001) (*Verizon Pennsylvania Order*) (citations omitted). *See also Sprint v. FCC*, 274 F.3d at 556 ("When the Commission adjudicates §271 applications, it does not – and cannot – conduct *de novo* review of state rate-setting determinations. Instead, it makes a **general** assessment of compliance with TELRIC principles.").

⁶¹ *Verizon Pennsylvania Order*, 16 FCC Rcd at 17453, para. 55.

⁶² *BellSouth Multistate Order*, 17 FCC Rcd at 17611, para. 32.

⁶³ When a state commission makes a determination that rates are TELRIC-compliant, it may not have explicitly analyzed every component of such rates, particularly when no party **has** taken issue with the component. Indeed, we do not provide extensive analysis on checklist items that receive little or no attention from commenters when **our** own review of the record leads **us** to conclude that the BOC **has** satisfied these requirements.

TELRIC principles would produce." Once the BOC makes a *prima facie* case of compliance, the objecting party must proffer evidence that persuasively rebuts the BOC's *prima facie* showing. The burden then **shifts** to the BOC to demonstrate the validity of its evidence or the state commission's approval of the disputed rate or charge." When a party raises a challenge related to a pricing issue for the first time **in** the Commission's section 271 proceedings without showing why it was not possible to raise it before the state commission, we may exercise our discretion to give this challenge little weight. In such cases, we will not find that the objecting party persuasively rebuts the *prima facie* showing of TELRIC compliance if the BOC provides a reasonable explanation concerning the issue raised by the objecting party.

23. With these principles in mind and after thoroughly reviewing the record in this application, we find that BellSouth's UNE rates in Florida and Tennessee are just, reasonable, and nondiscriminatory, and are based **on** cost plus a reasonable profit **as** required by section 252(d)(1). We therefore find that BellSouth's UNE rates in Florida and Tennessee satisfy checklist item 2. Before we discuss commenters' arguments and our conclusions, we summarize the pricing proceedings in each state.

a. Background

(i) Florida Commission Pricing Proceedings

24. By order dated May 26, 1999, the Florida Commission opened Docket 990649-TP to set deaveraged prices for UNEs **as** well **as** prices for UNE combinations and non-recurring charges.' **On** May 25, 2001, the Florida Commission issued its 621-page Final Order on Rates for Unbundled Network Elements Provided by BellSouth (Phases I and II).⁶⁷ In the **Final UNE Rate Order**, the Florida Commission addressed the appropriate methodology, assumptions, and inputs for establishing UNE rates and directed BellSouth to unbundle the identified elements and subloop elements for the purpose of setting prices and to provide access to those subloop elements." The Florida Commission determined that the inclusion of non-recurring costs in recurring rates should be considered when the resulting level of non-recurring charges would

⁶⁴ See, e.g., *Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in New Jersey*, WC Docket No. 02-67, Memorandum Opinion and Order, 17 FCC Rcd 12275, 12305, para. 68 (2002) (*Verizon New Jersey Order*).

⁶⁵ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20635-39, paras. 51-59.

⁶⁶ Florida Public Service Commission, *In re: Investigation into Pricing of Unbundled Network Elements, Final Order on Rates for Unbundled Network Elements Provided by BellSouth*, Docket No. 990649-TP, at 18 (May 25, 2001) (*Florida Commission UNE Rate Order*).

⁶⁷ *Id.* at I.

⁶⁸ *Id.* at 126-327

constitute a barrier to entry.” In addition, the Florida Commission defined xDSL-capable loops and found that a cost study addressing such loops may make distinctions based on loop length.⁷⁰ The Florida Commission identified the applicable UNE rates and directed that they should become effective as carriers amend their existing interconnection agreements to incorporate the state-approved rates.”

25. In the *Final UNE Rate Order*, the Florida Commission directed BellSouth to re-file, within 120 days, revisions to its cost study addressing hybrid copper/fiber xDSL-capable loops, network interface devices (NIDs), and cable engineering and installation.” During this proceeding, BellSouth determined, through proceedings in other states, that it was necessary to change certain inputs for Daily Usage Files (DUFs) rates.” This proceeding is known as the “BellSouth 120-day filing.”

26. In connection with the BellSouth 120-day filing, on March 11-12, 2002, the Florida Commission conducted an administrative hearing to receive evidence concerning some of the issues raised in that filing.⁷⁴ By order dated September 27, 2002, the Florida Commission addressed the following issues: loop cost studies and modifications; DUF cost studies and modifications; unbundled copper loop (non-design) cost study and modifications; NIDs; the hybrid copper/fiber xDSL-capable loop offering; accounting for inflation; and other related issues.” The Florida Commission found that BellSouth’s cost studies and associated inputs, as modified by the state commission in the *Florida Commission 120-Day Filing Order*, result in rates that comply with TELRIC principles.⁷⁶

27. On September 25, 2002, the Florida Commission filed comments in the section 271 proceeding before this Commission.⁷⁷ In those comments, the Florida Commission stated

⁶⁹ *Id.* at 327-433.

⁷⁰ *Id.* at 547.

⁷¹ *Id.* at 53440, 548, App. A.

⁷² *Id.* at 548. See also Florida Public Service Commission, In re: Investigation into Pricing of Unbundled Network Elements (BellSouth Track), *Final Order on Rates for Unbundled Network Elements Provided by BellSouth Telecommunications, Inc. (120-Day Filing)*, Docket No. 990649A-TP, at 8 (Sept. 21, 2002) (*Florida Commission 120-Day Filing Order*).

⁷³ *Florida Commission 120-Day Filing Order* at 8-9.

⁷⁴ *Id.* at 9.

⁷⁵ *Id.* at 2-3.

⁷⁶ *Id.* at App. A; Florida Commission Comments – Hearing at 100.

⁷⁷ *Id.* at 1.

that the state-approved UNE **rates** comply with TELRIC principles and recommended approval of BellSouth's section 271 application."

(ii) Tennessee Authority Pricing Proceedings

28. The Tennessee Authority set UNE prices with the stated goal of establishing forward-looking, cost-based rates that are consistent with the Commission's TELRIC methodology.* UNE rates were established over the course of several proceedings. On July 15, 1997, the Tennessee Authority convened the initial UNE rate proceeding (docket number 97-01262) **as** a contested case related to arbitration proceedings between BellSouth and AT&T.⁸⁰ The UNE rate proceeding consisted of two phases. In Phase I, the Tennessee Authority determined adjustments to the cost models, issuing an order on January 25, 1999, which adopted interim proxy prices applicable until the approval of permanent cost-based interconnection and UNE **prices**.⁸¹ In Phase II, the Tennessee Authority established **final** prices for interconnection and UNEs, issuing a final order on February 23, 2001.⁸²

29. The Tennessee Authority addressed a range of specific issues in this docket." After making 17 adjustments to BellSouth's TELRIC Calculator model, the Tennessee Authority adopted that model for setting all UNE prices, including loop inputs and non-loop UNEs.⁸⁴ BellSouth used three models to develop recurring costs: the Loop Model (for loops), the

⁷⁸ *Id.* at 99-100.

⁷⁹ BellSouth Application App. D – Tennessee, Vol. 4, Tab 39, *Petition to Convene a Contested Case Proceeding to Establish Permanent Prices for Interconnection and Unbundled Network Elements*, Tennessee Authority, Interim Phase I Order, Docket No. 97-01262, at 8 (Jan. 25, 1999) (*Tennessee Authority Phase I UNE Order*).

⁸⁰ *Id.* at 3. *See also* Tennessee Authority Comments at 7.

⁸¹ *See Tennessee Authority Phase I UNE Order. See also* Tennessee Authority Comments at 7.

⁸² BellSouth Application App. D – Tennessee, Vol. 6, Tab 65, *Petition of BellSouth Telecommunications, Inc. to Convene a Contested Case Proceeding to Establish "Permanent Prices" for Interconnection and Unbundled Network Elements*, Tennessee Authority, Final Order, Docket No. 97-01262 (Feb. 23, 2001). *See also* Tennessee Authority Comments at 8.

⁸³ The Tennessee Authority addressed 19 specific issues in this docket, including cost methodology for setting interconnection and UNE prices, cost model for recurring UNE prices, fill and utilization factors, depreciation rates, loop prices, switch costs, OSS costs, and calculation of nonrecurring costs. *Tennessee Authority Phase I UNE Order*.

⁸⁴ *Id.* at 7-8; BellSouth Application App. D – Tennessee, Vol. 5, Tab 59, *Petition of BellSouth Telecommunications, Inc. to Convene a Contested Case Proceeding to Establish "Permanent Prices" for Interconnection and Unbundled Network Elements*, Tennessee Authority, Second Interim Order re Revised Cost Studies and Geographic Deaveraging, Docket No. 97-01262, at 5-6 (Nov. 22, 2000).

Switched Network Calculator Model (for usage), and the Switching Cost Information System Model (for ports and vertical features)."

30. In May 2000, the Tennessee Authority opened a second proceeding (docket number 00-00544) to establish permanent UNE prices for line sharing, pursuant to the Commission's *Line Sharing Order*,⁸⁵ and permanent prices for riser cable and network terminating wire elements.⁸⁶ The Tennessee Authority later expanded the scope of this proceeding to address certain additional unbundling obligations in the Commission's *UNE Remand Order*.⁸⁸ The decisions in this docket were consistent with the decisions in docket number 97-01262, which remained in effect.⁸⁹

31. The Tennessee Authority established a permanent geographic deaveraging methodology for UNE loop rates in a third proceeding (docket number 01-00339).⁹⁰ The parties to that proceeding entered into a stipulated agreement for the rate deaveraging methodology, which the Tennessee Authority accepted and approved on August 5, 2002.⁹¹ Additionally, the Tennessee Authority set resale and wholesale discount rates of 16 percent and 21.56 percent, respectively, in separate proceedings (docket numbers 96-01152 and 96-01331).⁹² In addition to applying these discount rates to most tariffed recurring and nonrecurring local and intrastate toll retail offerings, BellSouth states that it will also apply the wholesale discount to nonrecurring

⁸⁵

BellSouth Application App. A, Vol. 2, Tab C, Affidavit of D. Daonne Caldwell (BellSouth Caldwell Aff.) at para. 33.

⁸⁶

Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 98-147, Third Report and Order, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*).

⁸⁷

BellSouth Application App. D – Tennessee, Vol. 7, Tab 44, *Generic Docket to Establish UNE Prices for Line Sharing Per FCC 99-355, and Riser Cable and Terminating Wire as Ordered in TRA Docket 98-00123*, Tennessee Authority, First Initial Order, Docket No. 00-00544, at 3 (Apr. 3, 2002) (*Tennessee Authority Line Sharing Order*).

⁸⁸

Id. at 5. See also *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (*UNE Remand Order*).

⁸⁹

Tennessee Authority Line Sharing Order at 3.

⁹⁰

BellSouth Application App. H – Tennessee, Vol. 3, Tab 42, *Generic Docket to Consider Technology Advances and Geographic Deaveraging*, Tennessee Authority, Report and Recommendation, Docket No. 01-00339 (March 13, 2002).

⁹¹

BellSouth Application App. H – Tennessee, Vol. 3, Tab 52, Transcript of Tennessee Authority Agenda Meeting, Vol. 1, Docket No. 01-00339 at 45-47 (Aug. 5, 2002).

⁹²

BellSouth Application App. H – Tennessee, Vol. 1, Tab 6, *In the Matter of the Interconnection Agreement Negotiation Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252*, Tennessee Authority, Report and Recommendation, Docket No. 96-01152 at 50-51 (Jan. 23, 1997). See also BellSouth Application App. A, Vol. 4b, Tab G, Affidavit of John A. Ruscilli and Cynthia K. Cox (BellSouth Ruscilli/Cox Aff.) at paras. 132-35.

charges associated with resold **services**.⁹³ The Tennessee Authority recently convened an additional proceeding (docket number 02-00434) to analyze the potential impact of technological advances on cost **development**.⁹⁴

b. Specific Pricing Issues

32. AT&T and Mpower raise five checklist item 2 pricing issues in connection with the Florida Commission's approval of BellSouth's UNE rates: the hot cut charge for SL-2 loops; the \$200 market-based expedite charge; promotional tariffs BellSouth offers to certain retail customers; the manner in which BellSouth accounts for inflation in calculating its rates; and BellSouth's loading factors. No commenter raises any checklist item 2 pricing issues in connection with the Tennessee Authority's approval of BellSouth's UNE rates.

(i) Hot Cut Charge for SL-2 Loops

33. AT&T argues that BellSouth's hot cut charges for Service Level-2 (SL-2) loops⁹⁵ in Florida are unlawful, anti-competitive, and do not comply with TELRIC principles.⁹⁶ According to AT&T, BellSouth charges \$160 to **perform** the first SL-2 hot cut and \$82.47 for each additional loop in the same order.⁹⁷ After reviewing AT&T's evidence and the Florida Commission's consideration of this issue, we find that BellSouth's hot cut charge for an SL-2 loop complies with checklist item 2.

34. A "hot cut" is the process of converting a customer from one network configuration served by an incumbent LEC's switch to a UNE-loop served by another carrier's switch." The "cut" is "hot" because telephone service on the specific customer's loop is

⁹³ BellSouth Ruscilli/Cox Aff. at paras. 132-35.

⁹⁴ BellSouth Caldwell Aff. at para. 201. **See also** BellSouth Application App. H, Vol. 3, Tab **49**, *Generic Docket to Consider Technology Advances*, Tennessee Authority, Order Accepting Report and Recommendation, Docket No. 02-00434 at 2 (May 13, 2002).

⁹⁵ BellSouth offers competitive LECs several different types of loops to purchase or lease, including SL-1, SL-2, unbundled copper (non-design), and UNE-Platform. BellSouth Application Reply App., Tab C, Reply Affidavit of C. Daonne Caldwell (BellSouth Caldwell Reply Aff.) at para. 17. **An** SL-2 loop includes not only the bare loop, but also a physical test point, a detailed loop "map" known **as** a Design Layout Record (DLR), and certain transmission capabilities. **Id** The less-expensive SL-1 loop includes only the bare loop, **id**, although carriers may also purchase some of the additives that come standard with an SL-2 loop. **Id** at para. 23. For example, a carrier **can** select an SL-1 loop and the BellSouth additive "Engineering Information Document"; together, these two products will result in a loop that is identical to an SL-2 loop in all respects save the presence of a physical test point. **Id**.

⁹⁶ AT&T Comments at 23-25; AT&T Reply at 38.

⁹⁷ AT&T Comments at 24.

⁹⁸ *Verizon New Jersey Order*, 17 FCC Rcd at 12302, para. 61 (citations omitted).

interrupted for a brief period of time, usually fewer than five minutes, during the conversion process.”

35. BellSouth’s hot cuts can be performed as “time-specific” or “non-time-specific.”¹⁰⁰ BellSouth charges **\$49** for an SL-1 hot cut and **\$135** for an SL-2 hot cut.¹⁰¹ The time-specific additive costs **\$23.02**.¹⁰² BellSouth states that competitive LECs request very few SL-2 hot cuts. Indeed, according to BellSouth, out of 4700 loops ordered in August 2002, only 16 were SL-2.¹⁰³ As a result, BellSouth claims, the \$160 figure that AT&T challenges here is “an uncommon occurrence” because it reflects both an SL-2, not an SL-1, loop, and it is time-specific, not non-time-specific.”

36. During the Florida UNE rate proceeding, AT&T submitted evidence purporting to show that BellSouth’s cost study for non-recurring charges (NRCs), which generates the disputed SL-2 hot cut charge, overstates BellSouth’s NRC costs.¹⁰⁵ AT&T argued that BellSouth’s NRC cost study “includ[es] costs that are not appropriate or necessary in a forward-looking network, overstat[es] time estimates for the completion of work activities, and includ[es] costs for procedures that would be automated in a forward-looking network.”¹⁰⁶ In preparing a rival NRC cost study, AT&T eliminated several provisioning workgroups entirely, such as the Local Customer Service Center (LCSC) and the UNE Center (UNEC)/Access Customer Advocate Center (ACAC).¹⁰⁷ According to AT&T, “these workgroups are middlemen” and “not intended for efficient operations.”¹⁰⁸ AT&T also adjusted work times for certain, unspecified work group

⁹⁹ *Id.*

¹⁰⁰ BellSouth Caldwell Reply Aff. at para. 23.

¹⁰¹ *Id.* at paras. 16, 19, 30.

¹⁰² *Id.* at paras. 16, 19.

¹⁰³ BellSouth Application Reply App., Tab E, Reply Affidavit of John A. Ruscilli and Cynthia K. Cox (BellSouth Ruscilli/Cox Reply Aff.) at para. 11.

¹⁰⁴ *Id.* While we agree that AT&T has chosen the most expensive hot cut rate to challenge, BellSouth does not dispute that the **\$160** rate is the correct rate for a time-specific, coordinated SL-2 hot cut. See BellSouth Caldwell Reply Aff. at para. 30.

¹⁰⁵ AT&T Comments at 24.

¹⁰⁶ *Id.*

¹⁰⁷ Letter from Jodi S. Sirotnak, Regulatory Analyst, Federal Government Affairs, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. **02-307** (filed Oct. **21, 2002**) (attaching AT&T Rebuttal Testimony of Jeffrey King Before Florida Public Service Commission, Docket No. 990649-TP, at 11 (revised Sept. **12, 2000**) (AT&T Florida Rebuttal King Testimony), and AT&T Supplemental Rebuttal Testimony of Jeffrey King Before Florida Public Service Commission, Docket No. **990649-TP**, at 5-6 (Aug. 28, **2000**) (AT&T Florida Supplemental Rebuttal King Testimony)).

¹⁰⁸ AT&T Florida Rebuttal King Testimony at 11

activities.¹⁰⁹ Finally, AT&T lowered BellSouth's assumption concerning the percent of manual work performed by certain work centers from 100 percent to 10 percent.” According to AT&T, many manual activities are a function of “embedded inefficiencies, and result in costs for which [C]LECs should not compensate an ILEC.”¹¹¹ Correcting for these purported errors, AT&T proposed SL-2 hot cut charges of \$22.63 for the initial loop and \$12.34 for each subsequent loop in the same order.”

37. The Florida Commission specifically rejected AT&T's argument concerning NRCs in a forward-looking network.” After noting that AT&T's witness had assumed “the existence of a fully automated ordering system which could identify all errors on an electronically submitted local service request (LSR) and resubmit it to [the] [C]LEC,”¹¹⁴ the Florida Commission stated that the witness “subsequently admitted that he was unaware if such a system has actually been implemented **anywhere**.”¹¹⁵ As a result of this information, the Florida Commission found AT&T's argument to be “**unrealistic**”¹¹⁶ and stated that “non-recurring studies should be forward-looking reflecting efficient practices and systems, **but this perspective should be tempered by considerations of what is reasonably achievable.**”” The Florida Commission then made certain adjustments to BellSouth's NRC cost study to account for problems that it identified in the study.

38. In evaluating BellSouth's **NRC** cost study, the Florida Commission chose three representative UNEs for detailed analysis and, based on its findings in connection with those UNEs, directed BellSouth to make adjustments to the work times for **all** NRCs.¹¹⁸ The Florida Commission specifically examined 11 different workgroups that perform work for BellSouth's NRCs and ordered BellSouth to reduce the various workgroups' work times by factors from 20 to 100 percent.” These adjustments reduced BellSouth's SL-1, SL-2, and other hot cut elements by

¹⁰⁹ *Id.* at 10-11.

¹¹⁰ *Id.* at 11.

¹¹¹ *Id.* at 12.

¹¹² AT&T Comments, App. A, Tab D, Declaration of Jeffrey A. King (AT&T King Decl.) at para. 11; BellSouth Caldwell Reply Aff. at para. 16 n.3.

¹¹³ *Florida Commission UNE Rate Order* at 332.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.* (emphasis added).

¹¹⁸ *Id.* at 335. The Florida Commission examined the following three UNEs: **ADSL** loop, CCS7 signaling, and interoffice transport – DSO. *Id.*

¹¹⁹ *Id.* at 423. In only one category did the Florida Commission approve no adjustment – travel time. *Id.*

an average of 41 percent.” The adjustments also lowered BellSouth’s proposed SL-2 hot cut rate from \$219 to a Commission-approved rate of \$135, a drop of 38 percent.¹²¹ Significantly, the Florida Commission also ordered BellSouth to reduce by 45 percent all work times for tasks performed by any other workgroup.¹²²

39. In this proceeding, AT&T contends that the Florida Commission erred in approving BellSouth’s SL-2 hot cut charges of \$160 (initial) and \$82.47 (subsequent). AT&T claims that the “manual activity required by BellSouth to complete a hot cut charge is minimal, and the time needed to complete the hot cut process is short.”¹²³ AT&T also argues that a comparison with hot cut charges in other states “demonstrates that BellSouth’s Florida rate is clearly excessive.”¹²⁴ AT&T states that BellSouth’s high hot cut charges threaten AT&T’s business plan of converting UNE-Platform customers to UNE-loop customers served on AT&T’s switches.¹²⁵ AT&T claims that it cannot attract business customers if it passes on the hot cut charge, and it cannot afford to absorb this NRC because it could not recoup the charge within its expected customer retention period.¹²⁶

40. BellSouth responds that AT&T has not shown clear error by the Florida Commission.¹²⁷ BellSouth argues that AT&T’s assumptions are unreasonable.¹²⁸ BellSouth also provides unrefuted evidence that performing a hot cut on an SL-2 loop is more labor intensive than for an SL-1 loop. The manual installation of the test point and associated manual testing require a technical “dispatch,” and, on an SL-2 loop, it must be performed on 100 percent of hot

¹²⁰ BellSouth Caldwell Reply Aff. at para. 30.

¹²¹ *Id.*

¹²² *Id.* Travel time was the only category of work time that the Florida Commission did not adjust or eliminate. See *id.*

¹²³ AT&T Comments at 24.

¹²⁴ *Id.*

¹²⁵ *Id.* at 24-25.

¹²⁶ *Id.* AT&T also argues that, while BellSouth has recently agreed to perform bulk hot cuts to convert UNE-Platform customers to UNE-Loop customers, the rate for bulk conversions “could be more expensive than submitting individual SL-2 orders that cost \$160 for the first hot cut per order but then charge the lesser amount of \$82 for each subsequent hot cut in the same order.” Letter from Alan C. Geolot, Counsel to AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-307 at 3 (filed Nov. 26, 2002) (AT&T Nov. 26 Ex Parte Letter). According to AT&T, BellSouth’s bulk conversion rate is \$134.32 per working telephone number. *Id.* at Attach. 1. We note that this charge is for “Project Management of After Hours UNE-P to UNE-L conversion.” *Id.* (emphasis added). AT&T provides no specific information about this charge, including whether the interconnection agreement with BellSouth provides for it. In addition, beyond AT&T’s claim that the bulk rate is high, there is no evidence in the record suggesting that BellSouth may not charge more for work performed after normal business hours. We therefore reject AT&T’s recent challenge to BellSouth’s bulk conversion rate.

¹²⁷ BellSouth Caldwell Reply Aff. at paras. 25-31.

¹²⁸ *Id.*

cuts.”” In addition, the SL-2 loop provides competitive LECs with tangible benefits not available with a simple SL-1 loop, such as loop mapping information and a physical test point.¹³⁰

41. As an initial matter, we note that the Florida Commission itself carefully reviewed BellSouth’s NRC cost study and significantly adjusted work times for BellSouth’s workgroups, eliminating some of them altogether.”” These adjustments reduced BellSouth’s hot cut charge for an SL-2 loop from \$219 to \$135, a 38 percent reduction. Notably, AT&T does not challenge these reductions; rather, it argues that the Florida Commission should have accepted its assumptions concerning the level of automation in a forward-looking network. AT&T’s representative conceded during the state proceeding *that* he did not know if such an automated system actually existed.”” He also acknowledged that a non-recurring cost study should reflect the use of forward-looking technologies that are “currently available and being deployed.”” In light of AT&T’s concessions and the Florida Commission’s adjustments to BellSouth’s NRC cost study, we cannot conclude that the Florida Commission committed clear error in rejecting AT&T’s assumption of a hypothetical, automated forward-looking network when calculating non-recurring costs for hot cuts.

42. BellSouth also presented credible evidence concerning the substantial amount of work required to perform an SL-2 hot cut.¹³⁴ As noted above, a technical dispatch, or manual installation and testing, is required on 100 percent of SL-2 hot cuts. AT&T has not shown that this work is overstated or unnecessary. Nor has AT&T provided any evidence, beyond its global challenge to the level of automation in BellSouth’s network, that the provisioning work for an

¹²⁹

Id. at para. 29. The test point helps BellSouth to locate the source of any loop trouble that might arise in the future. As a result, BellSouth states that it can locate and repair problems on an SL-2 loop much faster than with an SL-1 loop. Indeed, from April through August 2002, BellSouth took an average of 4.68 hours to repair SL-2 loop problems, whereas SL-1 loop problems were repaired in an average of 12.01 hours. Letter from Glenn T. Reynolds, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-307 (filed Oct. 25, 2002) (BellSouth Oct. 25 *Ex Parte* Letter – #1). Thus, while the hot cut charge for an SL-2 loop is roughly three times the rate for an SL-1 loop, the SL-2 loop provides significant benefits over the SL-1 loop in terms of the duration of service outages that a damaged home might experience.

¹³⁰ See generally Letter from Glenn T. Reynolds, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-307 at 6 (filed Nov. 22, 2002) (BellSouth Nov. 22 *Ex Parte* Letter – #1).

¹³¹ Florida Commission *UNE Rate Order* at 423.

¹³² *Id.* at 332

¹³³ *Id.*

¹³⁴ See, e.g., BellSouth Caldwell Reply Aff. at paras. 19-23

SL-2 hot cut or the benefit that such loops provide does not justify the cost differential between the SL-1 and SL-2 hot cut charges.¹³⁵

43. Finally, AT&T's general comparison of hot cut charges in Florida to those in other states or of other carriers is not **dispositive**.¹³⁶ While AT&T points out that Verizon charges only \$75.48 for a hot cut in Florida, Verizon's NRC cost study is not in **this** record. Nor is there any evidence in **this** record regarding what types of loops Verizon offers. In other section 271 orders, we have not found that a simple comparison of NRC rates in different states demonstrates TELRIC non-compliance.¹³⁷

44. We find that AT&T has not presented sufficient evidence that BellSouth's SL-2 loop hot cut charges do not comply with TELRIC principles. Accordingly, we find that BellSouth's SL-2 hot cut charges satisfy checklist item 2.

(ii) \$200 Expedite Charge

45. In July of **this** year, BellSouth stated its intention to begin, **as** of August 15, 2002, imposing a \$200 per day per line charge for expediting competitive LEC orders.¹³⁸ BellSouth proposed that, where necessary, its interconnection agreements be amended to reflect this charge.”

46. AT&T challenges BellSouth's proposed expedite charge **as** discriminatory because, it asserts, BellSouth does not impose a similar charge on its own customers for expediting their orders; AT&T also notes that BellSouth has provided no cost support for the charge.¹⁴⁰ According to AT&T, “provisioning of orders is itself a network element,” to which BellSouth must provide nondiscriminatory access **as** required in section 251(c)(3).¹⁴¹ Consequently, AT&T concludes, all aspects of BellSouth's provisioning, including its expedite process, must be offered in a nondiscriminatory manner and priced according to TELRIC principles, **as** required in sections 251(c)(3) and 252(d)(1).¹⁴²

¹³⁵ Nor does AT&T contend that BellSouth has failed to meet hot cut submetrics in Florida. See BellSouth Nov. 22 *Ex Parte* Letter – #1 at 7.

¹³⁶ See AT&T Comments at 24; Letter from Jodi S. Sirotiak, Regulatory Analyst, Federal Government Affairs, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-307 at 24 (filed Dec. 10, 2002) (citing confidential information).

¹³⁷ See, e.g., *Verizon New Jersey Order*, 17 FCC Rcd at 12306, para. 70 n.193.

¹³⁸ AT&T Reply at 44.

¹³⁹ AT&T Reply App., Tab C, Reply Declaration of Jeffrey A. King (AT&T King Reply Decl.) at para. 9.

¹⁴⁰ AT&T Comments at 25-26; AT&T Reply at 41.

¹⁴¹ AT&T Reply at 4243.

¹⁴² *Id.* at 44.

47. In response, BellSouth asserts that AT&T voluntarily agreed to an interconnection agreement that explicitly permits BellSouth to charge for expediting orders but sets no applicable charge. BellSouth contends that, for charges not specified in the agreement, the agreement refers to the “applicable BellSouth tariff.” In this case BellSouth states the “applicable” tariff is its interstate special access tariff. Accordingly, BellSouth argues, AT&T has agreed to terms “without regard” to the requirements of the 1996 Act, as permitted under section 251(a)(1).¹⁴⁴ BellSouth rejects the charge of discrimination, asserting that, under its special access tariff, its retail customers must also pay an additional charge to expedite their orders.¹⁴⁵

48. In an *ex parte* letter, AT&T contests BellSouth’s assertion that AT&T agreed to the expedite charge that it now challenges.* It points out that the interconnection agreement’s reference to BellSouth’s tariff for rates not specified in the agreement appears in a table setting rates for daily usage files (DUF), not in any portion of the agreement relating to expedition of UNE orders.¹⁴⁷ AT&T further asserts that, even if the interconnection agreement did properly refer to BellSouth’s “applicable tariff for the expedite charge, the special access tariff on which BellSouth relies does not relate, in any way, to the process for expediting the provisioning of a competitive LEC’s UNE orders and therefore is not “applicable.”¹⁴⁸

¹⁴³ BellSouth Reply at 38-39. Section 3.14 of Attach. 7 to BellSouth’s interconnection agreement with AT&T provides that “BellSouth may bill expedite charges for expedited due date and will advise AT&T of any charges at the time the offered date is provided.” BellSouth Ruscilli/Cox Reply Aff. at para. 18. BellSouth also points to language in its interconnection agreement which states that “[i]f no rate is identified in the contract, the rate for the specific service or function will be as set forth in applicable BellSouth tariff or as negotiated by the Parties upon request by either Party.” *Id*

¹⁴⁴ BellSouth Reply at 38-39. BellSouth also states that AT&T has not challenged the expedite charge before the Florida Commission. *Id* at 38. It argues that AT&T’s arguments, appearing as they do for the first time in opposition to BellSouth’s section 271 application, should receive little weight and that our precedent requires only that BellSouth provide a “reasonable explanation” for the charge. *Id* at 39-40 (citing BellSouth *Multistate Order*, 17 FCC Rcd at 17611, para. 32). By way of providing such an explanation, BellSouth contends that it need only charge TELRIC rates for providing the nondiscriminatory access to UNEs that section 251(c)(3) requires. It argues that it meets this nondiscrimination obligation by meeting its standard provisioning intervals. BellSouth Reply at 39. By seeking provisioning that is faster than these intervals, BellSouth argues, AT&T is requesting superior quality access to UNEs, which need not be offered at TELRIC rates and to which the Eighth Circuit, in reviewing the *Local Competition Order*, held that competitive LECs were not entitled. *Id* (citing *Iowa Utilities Board*, 120 F.3d 753, 812-13 (8th Cir. 1997), *aff’d in part and rev’d in part*, 525 U.S. 366, 397 (1999)). See also BellSouth Ruscilli/Cox Reply Aff. at para. 20.

¹⁴⁵ BellSouth Ruscilli/Cox Reply Aff. at para. 22.

¹⁴⁶ See AT&T Nov. 26 *Ex Parte* Letter at 1-3. AT&T also states that the expedite charge may violate the public interest standards of section 271. See *id* at 3. We reject this argument for the same reasons we reject AT&T’s claim that the expedite charge violates checklist item 2 pricing standards.

¹⁴⁷ Letter from Alan C. Geolot, Counsel to AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-307 (filed Nov. 18, 2002) (AT&T Nov. 18 *Ex Parte* Letter – Expedite Charge).

¹⁴⁸ *Id*

49. It does not appear from the record that BellSouth has actually imposed **this** new expedite charge.” Moreover, the record indicates that the parties continue to negotiate an amendment to their interconnection agreement that would set the amount of the **charge**.¹⁵⁰ At present, **as** discussed above, the parties disagree primarily over whether their interconnection agreement definitively establishes the rate for an expedite charge.

50. To the extent that the parties have **an** actual dispute and do not continue to negotiate **this** issue, it is a dispute regarding interpretation or implementation of their interconnection agreement. As such, it is a dispute that AT&T should present to the Florida Commission in the first instance; it is a dispute that does not amount to a violation of checklist item 2.¹⁵¹ Indeed, AT&T has stated its intention to “seek relief from the appropriate decision makers” if it cannot come to terms with BellSouth on a mutually acceptable expedite charge. In **this** regard, we note that the interconnection agreement specifically provides that the Florida Commission will resolve interpretive and implementation **disputes**.¹⁵²

51. For the foregoing reasons, we reject AT&T’s allegations that BellSouth’s \$200 expedition charge per day per line or circuit is discriminatory and violates checklist item 2.

(iii) Promotional Tariffs

52. We also reject Mpower’s argument that BellSouth violates checklist item 2 by improperly providing promotional discounts to certain BellSouth business customers in **Florida**.¹⁵³ Mpower very generally states that, **through** a series of Florida intrastate tariffs, BellSouth offers continuous discounts of 10-25 percent **off** of retail rates to small business customers in selected wire centers in which BellSouth faces competition, making such

¹⁴⁹ See Letter from Alan C. Geolot, Counsel to AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-307 at 3 (filed Nov. 21, 2002). **Our** decision in this proceeding is based on the record before **us**. We express no opinion on whether the expedite charge would violate section 271 if BellSouth were to apply it.

¹⁵⁰ See AT&T Reply App., Tab C, Reply Affidavit of Jeffrey A. King (AT&T **King** Reply Aff.) at para. 12 (“AT&T is continuing to **try** to resolve this matter with BellSouth and if no resolution can **be** reached will seek relief from the appropriate decision makers.”).

¹⁵¹ See *BellSouth Multistate Order*, 17 FCC Rcd at 17718, para. 220 n.843, 17723, para. 230 (allegations that a carrier refuses to perform according to the terms of an interconnection agreement should be addressed **by** the state commissions in the first instance). Accord *Verizon Pennsylvania Order*, 16 FCC Rcd at 17484, para. 118; *Verizon New Jersey Order*, 17 FCC Rcd at 12354, para. 159.

¹⁵² The agreement states that a “dispute that arises **as** to the interpretation of any provision of this Agreement or **as** to the proper implementation of this Agreement, **may** be taken to the [Florida] Commission for resolution.” BellSouth Application App. B – Florida, BellSouth - AT&T Interconnection Agreement, sec. 16. See also *id.*, Attach. 6, sec. 1.15 (requiring 45-day period of negotiation of billing disputes, before submission of dispute to Florida Commission).

¹⁵³ Mpower Comments at 15-16.

discounted rates lower than BellSouth's wholesale charges.'" Mpower asserts that these targeted discounts are discriminatory and anti-competitive.¹⁵⁵ Notably, Mpower does not refer to any specific retail or wholesale rates in its comments; nor does it provide any evidence of any particular prices, costs, or rates to substantiate its claims.

53. Assuming that BellSouth does provide such promotional discounts, Mpower has not provided facts amounting to a violation under either section 271 or section 272. As stated above, **our** analysis in this proceeding focuses on whether the rates for network elements are just and reasonable, and **nondiscriminatory**.¹⁵⁶ Mpower does not contend that BellSouth's UNE rates are improper; instead, Mpower states that certain unspecified promotional retail rates offered by BellSouth in Florida are too low.'" In general, however, the Commission does not have jurisdiction to consider a state's retail rates.'" In addition, to the extent that Mpower may be attempting to make a price squeeze argument, it has submitted none of the support that we have stated in previous orders is necessary to support such a **claim**.¹⁵⁹

54. Mpower's nonspecific and unsubstantiated claim of "discrimination" related to BellSouth's retail rates is not in the nature of a claim under section 271. Nor does Mpower contend that BellSouth discriminates in favor of its long-distance affiliate in violation of section 272. Instead, Mpower appears to be raising a section 202 claim of discrimination on behalf of the retail customers who do not receive the subject discounts. It does not, however, explain how such a claim may be relevant to **our** analysis under section 271. Accordingly, we reject Mpower's argument.

(iv) Inflation Rate

55. AT&T alleges that BellSouth's cost study impermissibly double-counts **inflation**.¹⁶⁰ The cost study includes a component for anticipated inflation in the nominal cost of

¹⁵⁴ *Id.* **Bur** **see** BellSouth Ruscilli/Cox Aff. at para. 42 (disputing Mpower's assertion that such discounts make BellSouth's retail prices lower than its wholesale charges). We note that Mpower did not raise **this** argument in the Florida section 271 pricing proceeding. These **tariffs** are now the subject of a separate, open proceeding initiated by Florida Digital Network, Inc. See Florida Commission, Docket **No.** 020119-TP. See also BellSouth Ruscilli/Cox Reply Aff. at para. 36.

¹⁵⁵ Mpower Comments at 15-16.

¹⁵⁶ See 42 U.S.C. § 252(d)(1).

¹⁵⁷ See Mpower Comments at 15-16. Mpower does not contend that the discounts violate any resale requirements.

¹⁵⁸ BellSouth *Multistate* Order, 17 FCC Rcd at 17752-53, para. 279.

¹⁵⁹ See, e.g., *id.* at 17756, para. 285.

¹⁶⁰ AT&T Comments at 22-23; AT&T Comments App., Tab E, Declaration of **John** C. Klick **and** Brian F. Pitkin (AT&T Klick/Pitkin Decl.) at paras. 4-16; AT&T Reply at 35-38; AT&T Reply App., Tab D, Reply Declaration of **John** C. Klick **and** Brian F. Pitkin (AT&T Klick/Pitkin Reply Decl.) at paras. 3-16; Letter **from** Alan C. Geolot, Counsel to AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket **No.** 02-307 (continued....)

capital and then adds anticipated inflation to asset values **as well**.¹⁶¹ AT&T claims that allowing the **use** of the nominal cost of capital, which already includes inflation, and the use of asset values adjusted for anticipated inflation results in double recovery of inflation and constitutes a per se violation of TELRIC **principles**.¹⁶²

56. BellSouth acknowledges that its cost study recovers for inflation reflected both in the cost of capital and asset **values**.¹⁶³ BellSouth argues, however, that it is entitled to account for inflationary pressures on both its assets and the cost of money.¹⁶⁴ BellSouth claims that its methodology is consistent with generally accepted economic principles and prevailing academic literature.¹⁶⁵ In any event, BellSouth states that the Florida Commission – and this Commission in the BellSouth *Georgia/Louisiana* Order – previously considered and rejected AT&T's argument concerning double recovery of inflation.¹⁶⁶

57. As an initial matter, we conclude that, in its *Final UNE* Rate Order, the Florida Commission did not either explicitly approve or reject BellSouth's argument that it may recover anticipated inflation both in the cost of capital and **through** asset **values**.¹⁶⁷ The Florida Commission concluded its discussion of this issue by simply stating that it was "concerned about BellSouth's use of inflation factors in its cost **model**."¹⁶⁸ Beyond this expression of general concern, we discern no specific finding from the Florida Commission about the propriety of BellSouth's methodology.¹⁶⁹

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(filed Nov. **18,2002**) (AT&T Nov. **18 Ex Parte** Letter – Inflation Rate) (attaching Supplemental Declaration of John C. Klick and Brian F. Pitkin (AT&T Klick/Pitkin Supp. Decl.) at paras. **3-16**).

¹⁶¹ See, e.g., AT&T Klick/Pitkin Decl. at para. **3**.

¹⁶² AT&T Comments at **22**; AT&T Reply at **35**.

¹⁶³ BellSouth Reply at **34**; BellSouth Caldwell Reply Aff. at para. **5**; BellSouth Application Reply App., Tab B, Reply Affidavit of Randall S. Billingsley (BellSouth Billingsley Reply Aff.) at paras. **11-30**.

¹⁶⁴ BellSouth Billingsley Reply Aff. at paras. **11-13**.

¹⁶⁵ *Id.* at paras. **23-27**.

¹⁶⁶ Letter from Sean A. Lev, Counsel to BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. **02-307** (filed Nov. **8,2002**) (BellSouth Lev Nov. **8 Ex Parte** Letter) (stating that, in light of **this** precedent, "there is no legal basis for this Commission to second-guess the reasoned decision of the Florida PSC"). BellSouth also characterizes the inflation dispute **as** a "battle[] of experts" that this Commission should not resolve. *Id.*

¹⁶⁷ *Florida Commission UNE Rate Order* at **300**.

¹⁶⁸ *Id.*

¹⁶⁹ *Bur see* BellSouth Application App. D – Florida, Tab **43**, Florida Commission Staff Recommendation for Special Agenda at **338** (stating that the Florida Commission "staff does not believe that the BellSouth model double counts inflation in its cost model"), and **342-43** (April **6,2001**). No party contends that a staff recommendation has the same force and effect **as** an order of the Florida Commission.

58. Nor do we conclude that we are bound by the Commission's brief statement concerning this issue in the *BellSouth Georgia/Louisiana Order*.¹⁷⁰ In that application, AT&T submitted cursory and Speculative evidence of alleged double counting of inflation that ~~was~~ insufficient to overcome BellSouth's prima facie case premised on the state commission's consideration and rejection of ~~this~~ very issue.'"

59. In ~~this~~ proceeding, however, the record on this issue is substantial. Both AT&T and BellSouth have submitted extensive evidence, including the written testimony of several experts in economics and finance, concerning the double recovery of ~~inflation~~.¹⁷² After careful review of the substantial record on this issue here, we find that AT&T has raised legitimate questions ~~a b u t~~ the validity of BellSouth's approach for the recovery of anticipated inflation in both asset values and the nominal cost of capital.

60. We need not resolve the inflation dispute in this section 271 proceeding. Both companies have submitted evidence concerning the effect of BellSouth's methodology on UNE rates.¹⁷³ While the companies disagree on the merits of BellSouth's approach, they separately concur that removing the inflation factor from asset values would lower UNE-platform and SL-1 loop rates by roughly 2.3 percent and port rates by 1.4 percent.'" BellSouth estimates that SL-2 loop rates would drop by 1.1 percent.'" BellSouth also estimates that elimination of the inflation factor would increase the rates for certain elements, particularly ~~transport~~, and AT&T does not dispute this ~~evidence~~.¹⁷⁶

¹⁷⁰

See *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9057, para. 76 (stating that "[i]t is not double counting for a commission to account for inflationary pressures ~~on~~ both the price of material ~~goods~~ and ~~on~~ the price of money itself"). See also *id.* at 9050, para. 59 and n.209, 9052, para. 62.

¹⁷¹ *Id.* at 9050, para. 59 n.209 (citing AT&T GALA I Comments, **Ex. A**, Declaration of Michael Baranowski at paras. 5-8 (alleging that loading factors double-count inflation)).

¹⁷²

See, e.g., AT&T Klick/Pitkin Decl. at paras. 4-16; AT&T Klick/Pitkin Reply Decl. at paras. 3-16; AT&T Klick/Pitkin Supp. Decl. at paras. 2-26; BellSouth Billingsley Reply Aff. at paras. 11-30; Letter from Randall S. Billingsley, BellSouth consultant, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-307 (filed Nov. 8, 2002) (BellSouth Billingsley Nov. 8 **Ex Parte** Letter) (appended as Attach. B to BellSouth Lev Nov. 8 **Ex Parte** Letter).

¹⁷³ AT&T Nov. 18 **Ex Parte** Letter; AT&T Klick/Pitkin Supp. Decl. at paras. 23-26 and **Ex. JK/BP-6**; Letter from Glenn T. Reynolds, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-307 at 1 and **Ex. 5** (filed Nov. 19, 2002) (BellSouth Nov. 19 **Ex Parte** Letter).

¹⁷⁴ Letter from Alan C. Geolot, Counsel to AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-307 (filed Nov. 20, 2002) (AT&T Nov. 20 **Ex Parte** Letter) (estimating \$0.43 drop – from \$18.62 to \$18.19 – in UNE-Platform price); AT&T Nov. 18 **Ex Parte** Letter; AT&T Klick/Pitkin Supp. Decl. at paras. 23-26 and **Ex. JK/BP-6**; BellSouth Nov. 19 **Ex Parte** Letter at I and **Ex. 5**.

¹⁷⁵

BellSouth Nov. 19 **Ex Parte** Letter at 1, Attach. 2, and **Ex. 5**.

¹⁷⁶

Id. at Attach. 2.

61. BellSouth also argues that, even if the Commission were to agree with AT&T regarding BellSouth's adjustments for inflation, the slight overstatement of UNE rates resulting from this error must be evaluated in light of the many downward adjustments that the Florida Commission made during the BellSouth 120-day filing.¹⁷⁷ We agree. As a practical matter, our task is not to conduct a TELRIC rate-making proceeding within 90 days, or even to conduct a de novo review of the state commission's rate determinations, but instead to determine whether the state commissions applied general TELRIC principles and whether any errors push rates outside the range that a reasonable application of TELRIC principles would produce.¹⁷⁸

62. Here, the Florida Commission has demonstrated a strong commitment to TELRIC principles and adjusted numerous inputs, such as cost of capital, depreciation, and others, to lower levels than those proposed by BellSouth.¹⁷⁹ The Florida Commission could have approved many of BellSouth's proposed inputs or selected inputs between BellSouth's and the competitive LECs' without violating TELRIC principles.¹⁸⁰ Such selections would likely have affected rates more than the one-to-two percent at issue here.¹⁸¹ Thus, there is no evidence that the one-to-two percent error alleged by AT&T moves rates outside a reasonable TELRIC range, and we reject AT&T's argument that the double counting of inflation is a per se TELRIC violation that dooms this application.¹⁸² Moreover, AT&T has not demonstrated that the alleged error results in rates outside a reasonable TELRIC range.¹⁸³

¹⁷⁷

BellSouth Nov. 19 *Ex Parte* Letter at 2-3 (discussing Florida Commission's adoption of AT&T's proposed changes on a series of technical inputs, including splicing, facility sharing, and placement assumptions); BellSouth Nov. 22 *Ex Parte* Letter – #1 at 2-3 (listing the technical inputs favored by AT&T and adopted by the Florida Commission).

¹⁷⁸ *AT&T Corp. v. FCC*, 220 F.3d 607, 616, 618 (D.C. Cir. 2000) (recognizing that TELRIC pricing principles are flexible and can produce a range of acceptable rates); *BellSouth Multistate Order*, 17 FCC Rcd at 17610-11, paras. 30-32 (discussing standard of review and shifting of the burden of proof).

¹⁷⁹

Florida Commission UNE Rate Order at 171, 187. See also *Florida Commission 120-Day Filing Order* at 118 and App. A (reducing many UNE rates to levels favored by competitive LECs). We note that the commissions in South Carolina and Kentucky, states in which BellSouth has received section 271 authority, approved higher cost of capital rates than the 10.24% rate approved by the Florida Commission. See South Carolina Commission, *Generic Proceeding to Establish Prices for BellSouth Telecommunications, Inc.'s Interconnection Services, Unbundled Network Elements and other Related Services*, Order on UNE Rates, Docket No. 2001-65-C, at 5 (rel. Nov. 30, 2001) (approving BellSouth's proposed 11.25% cost of capital); Kentucky Commission, *In the Matter of An Inquiry into the Development of Deaveraged Rates for Unbundled Network Elements*, Order, Docket No. 382, at 26 (rel. Dec. 18, 2001) (approving 10.67% cost of capital).

¹⁸⁰ See BellSouth Nov. 22 *Ex Parte* Letter – #1 at 2.

¹⁸¹ See *id.* at 3.

¹⁸² Cf. *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6275, para. 79 (stating that, even if the fill factors for transport rates did not adhere to TELRIC principles, "the resulting difference in rates is minimal for shared transport, and any error is not of great enough magnitude to require denial of the application" (citations omitted)).

¹⁸³

Cf. *Verizon New Jersey Order*, 17 FCC Rcd at 12304, para. 67 ("AT&T provides no evidence that the line between TELRIC and non-TELRIC pricing for a hot cut charge in New Jersey falls somewhere between the \$30-\$33 (continued...)

63. Although AT&T raises legitimate questions about BellSouth's methodology for accounting for inflation – questions that we trust state commissions will closely examine in future UNE rate proceedings – we conclude that, in this instance, BellSouth's inflation adjustments do not result in rates outside the range of rates that a reasonable application of TELRIC principles would produce.

(v) Loading Factors

64. AT&T asserts that the Florida UNE rates could be overstated as the result of a possible error in the underlying loading factors used to determine investments.¹⁸⁴ As we explain in more detail below, we are satisfied that such an error does not exist, and accordingly, we reject AT&T's argument.

65. AT&T bases its argument on an error that BellSouth previously announced in calculating its hardwire and plug-in loading factors in a North Carolina UNE proceeding. AT&T asserts that, in North Carolina, BellSouth reduced one of the relevant loading factors by approximately 40 percent after correcting its mistake.¹⁸⁵ AT&T explains that, because BellSouth uses the same cost study methodology throughout its region, it likely made the same error in Florida.¹⁸⁶ According to AT&T, it cannot determine from the information available to it whether BellSouth made the same error in Florida.¹⁸⁷ AT&T argues that BellSouth must state whether or not such an error exists in the development of the loading factors related to the Florida UNE rates and must correct any existing error prior to any Commission action on BellSouth's section 271 application for Florida.¹⁸⁸

66. In response, BellSouth states that its Florida UNE rates contain no similar error.¹⁸⁹ BellSouth explains that, in North Carolina, it incorrectly incorporated another state's data into certain loading factors and also incorrectly applied the state sales tax, but it states that these

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rate it is and the 33 rate it now finds unacceptable.”), 16, at 70. It
AT&T’s “simple rate comparison does not, by itself, demonstrate that the New Jersey Board failed to follow
TELRIC principles”).

¹⁸⁴ AT&T Reply at 34-35. See also AT&T Reply App., Tab E, Reply Declaration of Brian F. Pitkin (AT&T Pitkin Reply) at paras. 3-10.

¹⁸⁵ AT&T notes that the error at issue affected the installation cost of circuit equipment, such as dual line carrier equipment. BellSouth’s correction of the error reduced the UNE cost of a two-wire loop by \$1.04 and the UNE cost of a DS line to 4.6. AT&T Pitkin Reply Decl. at paras. 3.

¹⁸⁶ See AT&T Pitkin Reply Decl. at paras. 7-9.

¹⁸⁷ Id. at paras. 5-6; AT&T Reply at 35.

¹⁸⁸ AT&T Reply at 35; AT&T Pitkin Reply Decl. at para. 11.

¹⁸⁹ It is from Glenn T. Reynolds, Vice President – Federal Regulatory, BellSouth, and Mr. H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 01-17 at 2 (dated N 8, 2002).

errors were specific to **North** Carolina and did not impact the Florida **rates**.¹⁹⁰ Additionally, BellSouth states that the same problem does not exist in Florida because, in Florida, BellSouth uses a different loading factor file incorporating an older study period.” We are satisfied with BellSouth’s confirmation that the errors related to the North Carolina UNE rates do not exist in Florida.

2. Access to Operations Support Systems

67. We find, **as** did the state **commissions**,¹⁹² that BellSouth provides nondiscriminatory access to its OSS and, thus, satisfies the requirements of checklist item 2. We find that the evidence presented in **this** record shows that BellSouth provides nondiscriminatory access to its OSS functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing. We base this determination on BellSouth’s actual performance in Florida and Tennessee.

68. The Commission **has** defined OSS **as** the various systems, databases, and personnel used by incumbent LECs to provide service to their **customers**,¹⁹³ and consistently has found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local **competition**.¹⁹⁴ We analyze whether BellSouth **has** met the nondiscrimination standard for each OSS function using the two-step approach outlined in prior **orders**.¹⁹⁵ Under the first inquiry, a BOC must demonstrate that it has developed sufficient electronic (for functions that the BOC accesses electronically) and **manual** interfaces to allow competing carriers equivalent access to all of the necessary OSS functions.¹⁹⁶ Under the second inquiry, we examine performance measurements and other evidence of commercial readiness to ascertain whether the BOC’s OSS is handling current demand and will be able to handle reasonably foreseeable future

¹⁹⁰ *Id*

¹⁹¹ *Id*

¹⁹² Florida Commission Comments – OSS Test at 84; Tennessee Authority Comments at 27.

¹⁹³ *Bell Atlantic New York Order*, 15 FCC Rcd at 3989-90, para. 83; *Application by BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Service in South Carolina*, CC Docket No. 97-208, Memorandum Opinion and Order, 13 FCC Rcd 539,585, para. 82 (1997) (*BellSouthSouth Carolina Order*); *SWBT Texas Order*, 15 FCC Rcd at 18396-97, para. 92.

¹⁹⁴ *See Bell Atlantic New York Order*, 15 FCC Rcd at 3989-90, para. 83; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20653-57, paras. 83-90; *BellSouthSouth Carolina Order*, 13 FCC Rcd at 54749,585, paras. 14-18, 82.

¹⁹⁵ *See, e.g., Bell Atlantic New York Order*, 15 FCC Rcd at 3991-94, paras. 85-89; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6284-85, paras. 104-05.

¹⁹⁶ *Bell Atlantic New York Order*, 15 FCC Rcd at 3992-93, para. 88; *Ameritech Michigan Order*, 12 FCC Rcd at 20616, para. 136 (stating that the Commission determines “whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them.”). For example, a BOC must provide competing carriers the specifications necessary to design their systems’ interfaces, and business rules necessary to format orders, **as well as** demonstrate that systems are scalable to handle current and projected demand. *Id*.

volumes.”” The most probative evidence that OSS functions are operationally ready is actual commercial usage in the state for which the BOC seeks section 271 authorization.¹⁹⁸ Absent sufficient and reliable data on commercial usage in a state, the Commission will consider the results of carrier-to-carrier testing, independent third-party testing, and internal testing in assessing the commercial readiness of a BOC’s OSS.¹⁹⁹ Where, **as** here, the BOC proves that many of the OSS functions in the states for which it seeks section 271 authorization are the same **as** in a state for which we have already granted such authorization; we may also look to performance in the latter state **as** additional evidence with which to make our **determination**.²⁰⁰ Here, however, we have sufficient and reliable data on commercial volumes in both Florida and Tennessee, so we do not need to look at commercial volumes in other states. We focus our analysis in this Order on a handful of issues that are contested by commenting parties or in areas where the record indicates discrepancies in performance between BellSouth and its competitors?”

a. State Commissions’ Determination that BellSouth’s OSS is Nondiscriminatory

69. Tennessee and Florida. The Tennessee Authority found that the BellSouth OSS are regional and that BellSouth is providing or generally offering nondiscriminatory access to network elements in accordance with the requirements of the **Act**.²⁰² The Florida Commission also found that BellSouth provides competitive LECs nondiscriminatory access to its OSS. The Florida Commission relied upon three sources of information for making its determination: the

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We **assess** “whether the **OSS** functions that the BOC **has** deployed are operationally ready, **as** a practical matter.” See *Bell Atlantic New York Order*, 15 FCC Rcd at 3992-93, para. 87.

¹⁹⁸

See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6285, para. 105.

¹⁹⁹

BellSouth Multistate Order, 17 FCC Rcd at 17660, para. 129.

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See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6285, para. 105; *BellSouth Multistate Order*, 17 FCC Rcd at 17660, para. 129; see Appendix D at paras. 11-14.

²⁰¹

We note that in its comments, AT&T lists various performance metrics missed **by** BellSouth. Although AT&T relates some of these missed metrics to alleged competitive impact, much of what AT&T lists demonstrates nothing more than isolated instances, or instances of near-compliance that, **as** we have found in previous orders, have no competitive impact. Accordingly, we decline to make a finding of noncompliance based upon AT&T’s unsubstantiated allegations. See AT&T **Noms** Decl. However, the order fully treats those portions of the **Noms** Declaration that correlate BellSouth performance data to any competitive impact alleged by AT&T in its comments. Pursuant to section 271(d)(6), we will monitor BellSouth’s performance in the post-approval period. If BellSouth’s performance deteriorates, we will not hesitate to bring appropriate enforcement action. AT&T and other carriers may identify for the Enforcement Bureau areas of deteriorating performance in Tennessee, Florida, or other states.

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Tennessee Authority Comments at 27 and Attach. E at 3-6 and Attach. D at 6. See also BellSouth Application App. A, Vol. 5a, Tab I, Affidavit of William N. Stacy (BellSouth Stacy Aff.) at paras. 47, 91.

OSS third-party test (Florida KPMG test); BellSouth's own commercial data; and the competitive LECs' "real-world" experience?"

70. Florida KPMG Test. In 1999, the Florida Commission ordered BellSouth to conduct an independent third-party test of the readiness of specific aspects of BellSouth's OSS, interfaces, and processes that enable competitive LECs to compete against BellSouth.²⁰⁴ BellSouth relies on the Florida KPMG and the Georgia KPMG tests to support the instant application.

71. Under the direction of the Florida Commission, KPMG conducted the Master Test Plan (MTP).²⁰⁵ The Florida KPMG test reviewed the five OSS functions, as well as normal and peak volume testing of the OSS interfaces supporting pre-ordering, ordering, and maintenance and repair functions for both resale and UNE services.²⁰⁶ The Florida KPMG test also evaluated different transaction interfaces.²⁰⁷ KPMG performed pre-order, order, and repair transactions using BellSouth's interfaces to evaluate functional capabilities and determine whether competing carriers receive a level of service comparable to BellSouth retail service.²⁰⁸

72. The test was divided into five functional domains, including each critical OSS function, plus BellSouth's Change Management Process.²⁰⁹ Within each domain, specific methods and procedures were applied to evaluate BellSouth's performance *vis-à-vis* specific target tests." KPMG monitored BellSouth's performance while creating and tracking orders, entering trouble tickets and evaluating carrier-to-carrier bills." KPMG evaluated BellSouth's

²⁰³ Florida Commission Comments – OSS Test at 9; BellSouth Stacy Aff. at para. 57.

²⁰⁴ BellSouth Stacy Aff. at paras. 53-56.

²⁰⁵ The MTP identifies the specific testing activities necessary to demonstrate nondiscriminatory access and parity for BellSouth's systems and processes. *Id.*

²⁰⁶ *Id.* at Ex. WNS-11, BellSouth Telecommunications OSS Evaluation Project • Final Report at 10-15 (*KPMG Final Report*). The Florida Commission asserts that the third-party test was designed to examine all OSS interfaces in use for the vast majority of BellSouth product offerings, and that, at the request of the competitive LECs, the test scope was broadened to include lime-sharing and operator services/directory assistance. Florida Commission Comments – OSS Test at 14.

²⁰⁷ These transaction interfaces included Trouble Analysis Facilitation Interface (**TAFT**), Electronic Communication Trouble Administration (ETA), Local Exchange Navigation Systems (LENS), Telecommunications Access Gateway (TAG), Electronic Data Interchange (**EDI**), Operational Daily Usage File (ODUF), Access Daily Usage File (**ADUF**), and Billing Output Specification Bill Data Tape (BOS-BDT). *Id.* at 10.

²⁰⁸ *Id.* at 12.

²⁰⁹ *Id.* at 11. Change management is the process by which changes to systems and processes are introduced at BellSouth. BellSouth Stacy Aff. at para. 41.

²¹⁰ **KPMG** Final Report at 14.

²¹¹ *Id.* at 12.

day-to-day operations and operational management practices, including account establishment, help desks, and change management.” KPMG also evaluated the processes and systems used for performance metrics reporting.²¹³ In performing these tests, KPMG adopted a military-style test standard.²¹⁴ KPMG also sought input from both the Florida Commission and competitive LECs to understand the types of activities that had previously presented problems or otherwise were of concern.²¹⁵ Finally, KPMG took steps to assure that it gained first-hand knowledge of a competitive LEC’s experiences by instituting procedures to help ensure that KPMG’s experience would most accurately replicate that of a competitive LEC.²¹⁶

73. The persuasiveness of a third-party review depends upon the conditions and scope under which the review was conducted.²¹⁷ To the extent a test is limited in scope and depth; we rely on other evidence, such as actual commercial usage, to assess whether the BOC provides nondiscriminatory access to its OSS.²¹⁸ The Florida Commission actively directed and supervised the Florida KPMG test, monitoring telephone calls and attending meetings between KPMG and BellSouth.²¹⁹ Moreover, the MTP was revised a number of times in response to input from the industry, preceding state tests, and “regulatory emphasis by the DOJ and FCC.”²²⁰ We note that the Florida KPMG test was actively monitored by other state commissions in BellSouth’s territory and that it has been widely recognized for its independence, openness to competitive LEC participation, breadth of coverage, and level of detail.” Significantly, the Florida Commission determined that BellSouth met more than 97 percent of the KPMG evaluation criteria. For the evaluation criteria not met, the Florida Commission found that these

²¹² *Id.* at 16.

²¹³ *Id.* at 17-18. At the time of the final report, PMAP 4.0 had just become available. KPMG is conducting additional tests in the PMAP 4.0 environment. *Id.*

²¹⁴ When situations arose where testing revealed a BellSouth process, document, or system that did not meet expectations, BellSouth would formally respond by providing clarification or describing its intended fix for the problem, after which KPMG would retest if necessary. *Id.* at 13.

²¹⁵ *Id.* at 11.

²¹⁶ *Id.* at 14; Florida Commission Comments – OSS Test at 14.

²¹⁷ *Ameritech Michigan Order*, 12 FCC Rcd at 20658-59, para. 2 16.

²¹⁸ As noted above, we can rely on commercial volumes in both Florida and Tennessee. *See supra* para. 68.

²¹⁹ Weekly conference calls between the Florida Commission, competitive LECs, BellSouth and KPMG gave competitive LECs an opportunity to obtain information about the progress of the test and to communicate issues of concern. KPMG Final Report at 14.

²²⁰ Florida Commission Comments – OSS Test at 14; KPMG Final Report at 11.

²²¹ Florida Commission Comments – OSS Test at 12. Competitive LECs attended over 130 weekly status meetings, over 250 observation and exceptions discussion calls, and at least 15 face-to-face meeting or workshops. *Id.*

shortcomings did not constitute significant barriers to competition and would be resolved at a time certain or are pending resolution through a software change.”

74. Analysis of Commercial Data and Input from Competitive LECs. For further evidence that BellSouth’s OSS is nondiscriminatory, the Florida Commission reviewed the January through March 2002 commercial data and information provided by competitive LECs at a Competitive LEC Experience Workshop last February.²²³ The Florida Commission found that the commercial data generally confirms the OSS test results,²²⁴ and that the most significant issues raised at the Competitive LEC Experience Workshop had either been addressed by Florida Commission action or through the Florida KPMG test.²²⁵ Finally, the Florida Commission determined that the less significant issues raised at the Competitive LEC Experience Workshop were not supported by the available information, did not reflect systemic problems that inhibit the competitive LECs’ ability to compete, or did not rise to a level which would alter its finding that BellSouth’s OSS comply with the requirements of the Telecommunications Act.²²⁶

75. Supra’s claim that the Florida KPMG test is flawed because it focused on plain old telephone service (POTs) and not other services is inconsistent with the record.²²⁷ The KPMG test actually included a broad range of UNE loop ordering scenarios (e.g., loops, xDSL capable loops, DS1, line-sharing, and EELs) and UNE-Platform ordering scenarios (e.g., POTs, ISDN, PBX, DID).²²⁸ Moreover, the Florida KPMG test was expanded a number of times to include additional services (e.g., line-sharing and directory assistance) in response to comments made by competitive LECs to the Florida Commission.” Notably, the Florida KPMG test has been, “recognized for its ... breadth of coverage and depth of detail”²³⁰ and, as observed by the

²²² *Id.* at 9.

²²³ *Id.* at 9-10.

²²⁴ *Id.* at 10, 36-37, 52-53.

²²⁵ *Id.* at 10, 53-54, 82-84.

²²⁶ *Id.* at 10, 84-86.

²²⁷ Supra Comments at 21. Covad also faults the third-party test design. Covad Comments at 10-14. Although not a factor in *ow* decision here, we note that Covad concedes that the OSS Release 11.0 will repair the two design defects it identifies. We note that OSS Release 11.0 has been delayed so that BellSouth can address the defects identified in pre-release testing. BellSouth Application Reply App., Tab G, Reply Affidavit of William N. Stacy (BellSouth Stacy Reply Aff.) at paras. 103-11; BellSouth Application Reply App., Tab F, Reply Affidavit of David P. Scollard (BellSouth Scollard Reply Aff.) at para. 8.

²²⁸ See, e.g., KPMG Final Report at 174-76 (outline of scenarios to test Pre-order, Order, and Provisioning Functional Evaluation); 267-69 (outline of scenarios to test Pre-order, Order and Provisioning Volume Performance Test); 381-83 (outline of scenarios to test Order Flow-Through Evaluation).

²²⁹ Florida Commission Comments – OSS Test at 14; KPMG Final Report at 11.

²³⁰ Florida Commission Comments – OSS Test at 12.

Department of Justice, the Florida Commission “oversaw a robust third-party test.”²³¹ In any event, the extent to which the OSS test is narrow in scope, standing alone, merely limits the extent to which the test may supply useful evidence for **our** section 271 evaluation. It does not show that the test is “flawed.”

76. We also reject Supra’s claim that the Florida KPMG test was inadequate because KPMG was not granted access to BellSouth’s OSS identical to that offered to BellSouth’s retail operations.²³² Contrary to Supra’s assertions, we have never held that a competitive LEC must access the BOC’s OSS in the identical manner **as** does the BOC. Instead, the Commission has found that where a retail analogue exists, a BOC must provide access that is substantially the **same as** the level of access that the BOC provides itself, its customers, or its affiliates, in terms of quality, accuracy, and **timeliness**.²³³ For those functions that have no retail analogue, the BOC must demonstrate that the access it provides to competing carriers would offer **an** efficient carrier a “meaningful opportunity to **compete**.”²³⁴ The Commission **has** recognized in prior orders that there may be situations in which a BOC contends that, although equivalent access has not been achieved for an analogous function, the access that it provides is nonetheless nondiscriminatory within the meaning of the **statute**.²³⁵ The Florida KPMG test evaluated the methods BellSouth employs to provide competitive LECs access to BellSouth’s OSS, methods that we have found previously to constitute nondiscriminatory access to BellSouth’s OSS.²³⁶

77. Further, we find to be without merit Supra’s claim that the Florida KPMG test’s analysis of the operational experience of a pseudo-competitive LEC **was** inappropriate.” The use of a pseudo-competitive LEC to satisfy **this** prong of the test is not atypical and is consistent with prior third-party **tests** that have been used to support a section 271 **application**.²³⁸ Moreover, KPMG’s analysis reviewed BellSouth’s commercial data; thus, the Florida KPMG test was also based in part upon actual commercial experience.

²³¹ Department of Justice Evaluation at 2.

²³² Supra Comments at 6-10. *See also* Arvanitas Reply.

²³³ *Bell Atlantic New York Order*, 15 FCC Rcd at 3971-72, para. 44; *Ameritech Michigan Order*, 12 FCC Rcd at 20618-20, paras. 139-41.

²³⁴ Appendix D at para. 6.

²³⁵ *See id.* BellSouth argues that Supra’s choice not to use an integratable interface does not mean that BellSouth provides discriminatory access to pre-ordering and ordering functionality. Supra has chosen to use BellSouth’s human-to-machine electronic interface over one of BellSouth’s integratable machine-to-machine interfaces. BellSouth Stacy Reply Aff. at paras. 131-32.

²³⁶ *BellSouth Multistate Order*, 17 FCC Rcd at 17660, para. 128 *see also* *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9068, para. 101.

²³⁷ Supra comments at 10-11.

²³⁸ *See, e.g., BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9081-82, paras. 124-26.

78. Finally, we discount Supra's complaint that the Florida Commission should not have delegated competitive LECs' concerns to the third-party tester.²³⁹ We give this assertion little weight given the amount of input that competitive LECs had in the Florida KPMG test, the Florida Commission's careful consideration of the competitive LECs' concerns raised to KPMG, and the Florida Commission's consideration of the issues raised during its recently held Competitive LEC Experience **Workshop**.²⁴⁰ No commenters have presented sufficient evidence to cause us to discount the **results** of the Florida KPMG test.

79. We also disagree with Covad's claims that BellSouth's application should fail because a third party did not examine BellSouth's OSS in Tennessee?" Although in prior orders the Commission has held that third-party tests can provide critical information about the functionality and performance of a BOC's OSS,²⁴² especially where the record lacks evidence of commercial usage such as performance measurements, the Commission has never stated that a third-party test of an applicant's OSS is a prerequisite to checklist compliance.'" Moreover, as discussed further below, the PricewaterhouseCoopers (PwC) attestation leads us to conclude that the KPMG tests in Georgia and Florida yield information that is relevant and useful to our assessment of BellSouth's OSS in Tennessee. We emphasize that our analysis of an applicant's OSS rests on a wide range of evidence, of which evidence from third-party tests is but one part. In any event, the usefulness of a third-party test is reduced in **this** instance because BellSouth relies **on** evidence of actual commercial usage of its OSS, an OSS that this Commission in the *BellSouth Georgia/Louisiana* and *BellSouth Multistate Orders* found to be nondiscriminatory.'"

b. Relevance of BellSouth's Georgia OSS and OSS "Sameness" Audit

80. We find that BellSouth, through the PwC report, provides evidence that its OSS are substantially the same across BellSouth's nine-state **region**.²⁴⁵ **Thus**, we shall consider both the Georgia KPMG test and the Florida KPMG test in evaluating this application. Moreover, BellSouth's showing enables us to rely, in most instances, **on** findings relating to BellSouth's OSS from the *BellSouth Georgia/Louisiana Order* and the *BellSouth Multistate Order* **in** our

²³⁹ Supra comments at 10-12.

²⁴⁰ Florida Commission Comments – OSS Test at 10-14, 57-84.

²⁴¹ Covad Comments at 4.

²⁴² See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6291, para. 118.

²⁴³ See *id.*

²⁴⁴ BellSouth Reply at 17; BellSouth Oct. 25 *Ex Parte* Letter – #2 at 1; *BellSouth Multistate Order*, 17 FCC Rcd at 17660, para. 128; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9068, para. 101.

²⁴⁵ The Commission may, however, evaluate the performance in each state separately for enforcement purposes pursuant to section 271(d)(6).

analysis of BellSouth's OSS in Florida and Tennessee.²⁴⁶ To support its claim of sameness, BellSouth submits the PwC report which attests to the validity of its assertions that: (1) the same pre-ordering and ordering OSS, processes, and procedures are used to support competing LEC activity across BellSouth's nine-state region; and (2) there **are** no material differences in the functionality or performance of BellSouth's two order entry systems: Direct Order Entry (DOE) and Service Order Negotiation System (SONGS)?* PwC concluded that, in its opinion, BellSouth's assertions were "fairly stated, in all material respects."²⁴⁸

81. Accordingly, we reject Supra's claim that BellSouth's OSS are not regional and that we are thus barred from examining evidence from other BellSouth states in **our** evaluation of BellSouth's OSS in Florida and **Tennessee**.²⁴⁹ We have previously found the PwC examination closely modeled the successful "Five State Regional OSS Attestation Examination" performed in the context of **SWBT's** Kansas/Oklahoma section **271 application**.²⁵⁰ BellSouth has also provided detailed information regarding the "sameness" of BellSouth's systems in Florida and Tennessee to each other and to its OSS in states in which it has already received section **271 approval**.²⁵¹ We note that the regionality of BellSouth's OSS has now been confirmed by all of the state commissions in BellSouth's region that have ruled on **this issue**.²⁵² We thus conclude that there is no support in the record for Supra's claim.

²⁴⁶

This "anchor state" approach was developed in *the SWBT Kansas/Oklahoma Order* and has been used frequently since then. We have held that companies may use evidence **from an "anchor state"** when the OSS are regional. *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at **6286-88**, paras. **107-11**. See, e.g., *Application by Veruon New England Inc., Bell Atlantic Communications Inc. (d/b/a Veruon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Veruon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Rhode Island*, CC Docket No. **01-324**, Memorandum Opinion and Order, 17 FCC Rcd **3300,3329-30**, paras. **59-60 (2002) (Verizon Rhode Island Order)**. BellSouth asserts that its OSS in Georgia are substantially the same **as** its OSS in Florida and in Tennessee and, therefore, evidence concerning its OSS in Georgia is relevant and should be considered in **our** evaluation of Florida's and Tennessee's OSS. BellSouth Application at **4143,4647**; BellSouth Application App. A, Vol 2, Tab D, Affidavit of Alfred A. Heartley (BellSouth Heartley Aff.) at paras. **3-4, 21-31, 4246**; BellSouth Varner Aff. at paras. **28-32**; BellSouth Stacy Aff. at paras. **88-131**.

²⁴⁷

BellSouth Stacy Aff. at paras. **88-103**.

²⁴⁸

Id. at paras. **108-14**.

²⁴⁹

See Supra comments at **12**.

²⁵⁰

BellSouth Multistate Order, 17 FCC Rcd at **17662**, para. **133**.

²⁵¹

See, e.g., BellSouth Heartley Aff. at paras. **3-4, 21-31, 42-46**; BellSouth Stacy Aff. at paras. **88-131**; BellSouth Oct. **25 Ex Parte Letter - #2** at **2**; *BellSouth Multistate Order*, 17 FCC Rcd at **17662**, para. **133**; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at **9073**, paras. **110-11**.

²⁵²

BellSouth Application at **41-42**; BellSouth Stacy Aff. at paras. **88-91**; BellSouth Reply at **16-17**

c. Pre-Ordering

82. To comply with their obligation to provide nondiscriminatory access to OSS functions, BOCs must provide competing carriers with access to pre-ordering functions such as street address validation, telephone number selection, service and feature availability, due date information, customer service record information, and loop qualification information. We conclude that for Florida and Tennessee, BellSouth demonstrates that it provides competing carriers with nondiscriminatory access to pre-ordering functions. We find that BellSouth generally meets or exceeds the applicable benchmarks for the OSS pre-ordering metrics.²⁵³

83. Access to Loop Qualification Information. We find, as did the state commissions,²⁵⁴ that BellSouth provides competitive LECs with access to loop qualification information consistent with the requirements of the *UNE Remand Order*.²⁵⁵ Specifically, we find that BellSouth provides competitors with access to all of the same detailed information about the loop that is available to itself, and in the same time frame as any of its personnel could obtain it.²⁵⁶

84. We reject Covad's claim that BellSouth discriminates against competitive LECs by denying them access to the raw data underlying its prequalification tool for line-shared loops.²⁵⁷ BellSouth submits that it provides all competitive LECs with access to the raw loop make-up (LMU) data contained in its OSS.²⁵⁸ Specifically, BellSouth states that competitive LECs can use the LMU functionality in TAG or LENS to access the source data contained in the Loop Facilities Assignment and Control System (LFACS) database, or can use the Loop Qualification System (LQS) pre-qualification tool to derive theoretical LMU information from data contained in the Loop Engineering Assignment Data (LEAD) database.²⁵⁹ Furthermore,

²⁵³

See generally Appendices B and C.

²⁵⁴

See Florida Commission Comments – OSS Test at 58-59, 64; Tennessee Authority Comments at 28

²⁵⁵

The Commission's rules require BellSouth to provide competitors with access to all loop qualification information in its databases or internal records in the same time intervals that it is available to any BellSouth personnel, regardless of whether BellSouth personnel actually access that information. See *UNE Remand Order*, 15 FCC Rcd at 3885-86, paras. 427-31.

²⁵⁶

See, e.g., BellSouth Stacy Aff. at paras. 363-78; see also *Verizon Massachusetts Order*, 16 FCC Rcd at 9016-17, para. 54.

²⁵⁷

Covad comments at 8-10.

²⁵⁸

BellSouth Reply at 18; BellSouth Stacy Reply Aff. at para. 163.

²⁵⁹

BellSouth Reply at 15; BellSouth Stacy Reply Aff. at para. 163. BellSouth states that LFACS is the source of data for all loop make-up information in BellSouth's OSS. BellSouth Stacy Reply Aff. at para. 163. The LEAD database takes a "once-per-month-per-wire-center 'snapshot' of the information contained in the LFACS database, and the information contained in the loop qualification system is then derived from information in the LEAD database. BellSouth Stacy Reply Aff. at para. 163. In late September 2001, BellSouth also implemented an enhancement that allows competitive LECs to not only access LMU data contained in the LFACS database, but to also automatically launch a query to the Corporate Facilities Database for any loop qualification information that is (continued.. -)

BellSouth states that Covad may use the raw data that is contained in each of these databases or a combination of the two, to do exactly what BellSouth has done – design a prequalification tool optimized for its **own use**.²⁶⁰ **Thus**, to the extent Covad wants to create its own loop prequalification tool, it **has** nondiscriminatory access to the underlying information to do so. Accordingly, we do not believe that Covad's claim supports a finding of checklist noncompliance.'''

85. Facilities Reservation Number. Mpower claims that BellSouth's preordering functionality is discriminatory because BellSouth requires competitive LECs in Florida to obtain a Facilities Reservation Number (FRN) to order xDSL.²⁶² According to Mpower, if LENS²⁶³ shows that facilities **are** not available, it will not generate a FRN, and Mpower is unable to place an xDSL loop order. Mpower states that **40** percent of its xDSL sales in BellSouth territory were cancelled because BellSouth's LENS system informed Mpower that UNE loop facilities were not available, when at the same time, retail customers could obtain BellSouth Asymmetric Digital Subscriber Line (ADSL) services?'' BellSouth disputes that its pre-ordering processes are discriminatory. BellSouth denies that it requires competitive LECs to obtain **an** FRN to order XDSL, asserting that the Unbundled Copper Loop-Non-Design (UCL-ND), an xDSL compatible loop product, is **an** option that does not require the competitive LEC to obtain an FRN to place an order for XDSL. Moreover, BellSouth states that LENS is used by competitive LECs to obtain the same loop makeup information from LFACS in substantially the same timeframe as BellSouth does for itself.''' We decline to resolve this dispute in the context of a section 271 proceeding. Mpower in a letter dated September 13, 2002 requested the Commission's Enforcement Bureau to adjudicate the same issues it raises here.²⁶⁶ As the Commission found in previous proceedings, given the time constraints, the section 271 process simply could not function if we were required to resolve every interpretive dispute between a BOC and each

(Continued from previous page)

not currently resident in LFACS. BellSouth Stacy Aff. at para. 368. Competitive LECs may also submit manual LMU service inquiry requests for additional information that may have to be obtained from manual or paper plats. BellSouth Stacy Aff. at paras. 369-70.

²⁶⁰ BellSouth Stacy Reply Aff. at para. 163.

²⁶¹ **As** described in further detail below, we also note that Covad is **pursuing** its claim via the change control escalation process. **See** *infra* Part IV.B.2.g.

²⁶² Mpower Comments at **9-10**.

²⁶³ **LENS** is a web-based person-to-machine pre-ordering interface. **See** BellSouth Application at 63.

²⁶⁴ Mpower Comments at 9-10.

²⁶⁵ BellSouth Reply at **18-19**; BellSouth Stacy Reply Aff. at paras. 147-53.

²⁶⁶ **See** BellSouth Stacy Reply Aff., Ex. WNS-20 (attaching Letter from Scott A. Sarem, Vice President Strategic Relations, Mpower Communications to Alex Starr, Chief, Market Disputes Division, Enforcement Bureau, Federal Communications Commission (Sept. 13, 2002)). BellSouth responded to Mpower's arguments in the enforcement proceeding. **See** BellSouth Stacy Reply Aff., Ex. WNS-21 (attaching Letter from W.W. Jordan, Vice President – Federal Regulatory, BellSouth, to Radhika Karmarkar, Deputy Chief, Market Disputes Division, Enforcement Bureau, Federal Communications Commission (Oct. 4, 2002)).

competitive LEC about the precise content of the BOC's obligations to its **competitors**.²⁶⁷ We believe that an enforcement proceeding would be a more appropriate venue to resolve this fact-specific dispute between Mpower and BellSouth. No other competitive LECs have raised concerns about the FRN in the record.

d. Ordering

86. In this section, we address BellSouth's ability to provide competing carriers with access to the **OSS** functions necessary for placing wholesale and resale orders. Based on the evidence in the record, we find that BellSouth demonstrates that it provides nondiscriminatory access to its ordering systems. In the following discussion, we address the OSS issues primarily in dispute in **this** application: order confirmation notices, order reject notices, flow-through, and several other issues raised by the commenters.

(i) Order Confirmation Notices

87. Based on the evidence in the record,²⁶⁸ we conclude, as did the state **commissions**,²⁶⁹ that BellSouth is providing timely order confirmation notices to competitive LECs in Florida and Tennessee.

88. We recognize, however, that BellSouth failed to meet the 95 percent benchmark for the UNE mechanized and the 85 percent benchmark for the partially mechanized Other Non-Design sub-metrics in Florida and Tennessee during several of the relevant **months**.²⁷⁰ We find that these misses do not warrant a finding of checklist non-compliance. BellSouth explains that

²⁶⁷ *BellSouth Multistate Order*, 17 FCC Rcd at 17717, para. 218; *Georgia/Louisiana Order*, 17 FCC Rcd at 9139, para. 209; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17475, para. 101; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6355, para. 230; *SWBT Texas Order*, 15 FCC Rcd at 18366-67, paras. 22-27.

²⁶⁸ See Florida/Tennessee A.1.9.1 (FOC Timeliness – Mechanized – Residence); Florida/Tennessee A.1.9.2 (FOC Timeliness – Mechanized – Business); Florida/Tennessee A.1.9.3 (FOC Timeliness – Mechanized – Design Specials); Florida/Tennessee A.1.12.1 (FOC Timeliness – Partially Mechanized – Residence); Florida/Tennessee A.1.12.2 (FOC Timeliness – Partially Mechanized – Business); Florida/Tennessee A.1.13.1 (FOC Timeliness – Non - Mechanized – Residence); Florida/Tennessee A.1.13.2 (FOC Timeliness – Non - Mechanized – Business); Florida/Tennessee A.1.13.3 (FOC Timeliness – Non - Mechanized – Design Specials); Florida/Tennessee B.1.9.3 (FOC Timeliness – Mechanized Loop and Port Combinations); Florida/Tennessee B.1.9.14 (FOC Timeliness – Mechanized – Other Design); Florida/Tennessee B.1.9.15 (FOC Timeliness – Mechanized – Other Non - Design); Florida/Tennessee B.1.13.3 (FOC Timeliness – Non - Mechanized – Loop and Port Combinations); Florida/Tennessee B.1.13.14 (FOC Timeliness – Non - Mechanized – Other Design); Florida/Tennessee B.1.13.15 (FOC Timeliness – Non - Mechanized – Other Non - Design). See also KPMG Final Report at 195-98,202-04 (TVV1-3-4, TVV 1-3-5, TVV 1-3-10, TVV 1-3-11).

²⁶⁹

Florida Commission Comments – OSS Test at 24; Tennessee Authority Comments at 28.

²⁷⁰

Florida B.1.9.15 (FOC Timeliness – Mechanized – Other Non - Design) (May – 93.88%, June – 94.85%); Tennessee B.1.9.15 (FOC Timeliness – Mechanized – Other Non-Design) (May – 75.43%, June – 71.7%, July – 78.24%, Aug. – 87.22%); Tennessee B.1.12.15 (FOC Timeliness – Mechanized – Other Non-Design) (May – 65.56%, June – 75.68%, July – 71.43%); Tennessee B.1.9.15 (FOC Timeliness – Mechanized – Other Non-Design) (May – 75.42%, June – 71.70%, July – 78.24%, Aug. – 87.22%, Sept. – 87.22%).

its performance data for these sub-metrics between May and August were affected by an incorrect time-stamp in the **LEO** Header Table?” When BellSouth reran these data with the correct time-stamp, it met the benchmark each month in both states with a single exception.²⁷² Should BellSouth’s performance in this area deteriorate, we will pursue appropriate enforcement action.

89. AT&T **asserts** that BellSouth missed some **benchmarks** in Florida for AT&T’s UNE-Platform and UNE Loop partially mechanized orders?” As in prior section 271 orders, performance data relative to competitive LECs on an aggregate basis is the most persuasive evidence of whether **a BOC meets** the checklist **requirements**.²⁷⁴ Here, the aggregate data show that performance is satisfactory.“ **Thus**, although AT&T claims that its data show discriminatory performance, allegedly anomalous results for a single carrier in this instance are **insufficient to** rebut BellSouth’s evidence demonstrating checklist compliance.

(ii) Order Reject Notices

90. We conclude, as did the state commissions, that BellSouth provides competing carriers with order reject notices in a timely and nondiscriminatory **manner**.²⁷⁶ BellSouth establishes that it provides reject notices in a nondiscriminatory manner for those orders that require partial or full manual processing.” We also find that BellSouth demonstrates that it

²⁷¹ BellSouth Application at 67-68 n.51; BellSouth Vamer Aff., Exs. PM-2 at para. 45 and PM-3 at para. 45; BellSouth Vamer Reply Aff. at para. 90.

²⁷² BellSouth Vamer Aff., Exs. PM-2 at paras. 45-47 and PM-3 at paras. 43-45; BellSouth Vamer Reply Aff., **Ex.** PM-16. Florida B.1.9.15 (FOC Timeliness – Mechanized BellSouth – Other Non-Design) (May – 99.26%, June – 99.20%, July – 96.30%, Aug. – 99.10%); Tennessee B. 1.9.15 (FOC Timeliness – Mechanized – Other Non-Design) (May – 99.15%, June – 98.11%, July – 96.65%, Aug. – 99.02%); Tennessee B.1.12.15 (FOC Timeliness – Mechanized – Other Non-Design) (**May – 91.11%**, June – 90.54%, July – 81.32%, August – 92.05%). With the correct time-stamp, BellSouth missed sub-metric B.1.12.15 (FOC Timeliness – Partially Mechanized – Other Non-Design) in **Tennessee** in July by less than 4%. BellSouth Varner Aff., **Ex.** PM-32. BellSouth met the benchmarks for these sub-metrics in August and September.

²⁷³ AT&T **Noms** Decl. at paras. 54-55.

²⁷⁴ **See, e.g.**, BellSouth *Multistate* Order, 17 FCC Rcd at 17727-28, para. 237.

²⁷⁵ **See** Appendices B and C.

²⁷⁶ **See** Florida Commission Comments – OSS Test at 24; Tennessee Authority Comments at 28.

²⁷⁷ **See** Florida/Tennessee A.1.7.1 (Reject Interval – Partially Mechanized – Residence); Florida/Tennessee A.1.7.2 (Reject Interval – Partially Mechanized – Business); Florida/Tennessee A.1.8.1 (Reject Interval – **Non-Mechanized** – Residence); Florida/Tennessee A.1.8.2 (Reject Interval – Non-Mechanized – Business); Florida/Tennessee A.1.8.3 (Reject Interval – Non-Mechanized – Design (Specials); Florida/Tennessee B.1.7.3 (Reject Interval – Partially Mechanized – Loop and Port Combinations); Florida/Tennessee B.1.7.4 (Reject Interval – Partially Mechanized – Combo Other); Florida/Tennessee B.1.7.14 (Reject Interval – Partially Mechanized – Other Design); Florida/Tennessee B.1.7.15 (Reject Interval – Partially Mechanized – Other Non-Design); **Florida/Tennessee** B.1.8.3 (Reject Interval – Non-Mechanized – Loop and Port Combinations); Florida/Tennessee (continued...)

provides fully mechanized reject notices in a timely manner.²⁷⁸ In making this finding, we give substantial weight to the fact that KPMG independently tested BellSouth's ability to return mechanically processed rejects in a timely manner and found that BellSouth had satisfied all of KPMG's criteria.²⁷⁹

91. Although BellSouth missed the 97 percent benchmarks for the UNE Mechanized Design and Other Non-Design sub-metrics every month in both Florida and Tennessee, we do not find BellSouth's performance overall to be checklist noncompliant.²⁸⁰ Given the small number of LSRs for both sub-metrics in Tennessee,²⁸¹ BellSouth is allowed no more than one or two misses per month in that state under the 97 percent benchmark standard?*" The order volumes in Florida for the UNE Mechanized Other Design sub-metric also are low?" Consistent with previous orders, we find that low competitor order volumes **can** cause seemingly large variations in the monthly performance data, and thus decline to find checklist non-compliance based solely upon low volume performance measurements.²⁸⁴ Notwithstanding that order volumes for the UNE Mechanized Other Non-Design sub-metric are not low, BellSouth conducted a root cause analysis that adequately explains its failure to meet the benchmark for the

(Continued from previous page)

B.1.8.4 (Reject Interval – Non-Mechanized – Combo Other); Floridflennessee B.1.8.14 (Reject Interval – Non-Mechanized – Other Design); Floridflennessee B.1.8.15 (Reject Interval – Non-Mechanized – Other Non-Design)..

²⁷⁸

See generally Florida/Tennessee A. 1.4 (Reject Interval – Mechanized); Floridflennessee B. 1.4 (Reject Interval – Mechanized). While BellSouth did not meet the benchmarks in some months for mechanized residence and business resale orders, these misses were by very small margins, *i.e.*, generally less than 1%. *See* Floridflennessee Resale A. 1.4.1 (Mechanized Reject Interval – Residence); Floridflennessee Resale A. 1.4.2 (Reject Interval – Mechanized – Business).

²⁷⁹

See KPMG Final Report at 193-94, 200-03 (TVV 1-3-2, TVV 1-3-8, TVV 1-3-10).

²⁸⁰

See Florida B.1.4.14 (Reject Interval – Mechanized – Other Design) (58.97%, 61.22%, 55.56%, 54.17%, 78.48%); Tennessee B.1.4.14 (Reject Interval – Mechanized – Other Design) (71.43%, 50%, 66.67%, 77.78%, 72.50%); Florida B.1.4.15 (Reject Interval – Mechanized – Other Non-Design) (77.92%, 73.90%, 66.61%, 56.80%, 50.20%); Tennessee B.1.4.15 (Reject Interval – Mechanized – Other Non-Design) (79.55%, 75.00%, 85.33%, 68.18%, 72.09%).

²⁸¹

See Tennessee B.1.4.14 (Reject Interval – Mechanized – Other Design) (for May-Sept., order volumes were 21, 18, 27, and 40, respectively). *See* Tennessee B.1.4.15 (Reject Interval – Mechanized – Other Non-Design) (for May-Sept., order volumes were 88, 68, 75, 66, and 43, respectively).

²⁸²

See BellSouth Varner Reply Aff. at para. 124 (BellSouth in order to comply with the benchmark is allowed one miss per month under Tennessee B. 1.4.14 (Reject Interval – Mechanized – Other Design); BellSouth in order to comply with the benchmark is allowed **two** misses per month under Tennessee B.1.4.15 (Reject Interval – Mechanized – Other Non-Design); *see also* BellSouth Varner Reply Aff., **Ex.** PM-27.

²⁸³

See Florida B.1.4.14 (Reject Interval – Mechanized – Other Design) (for May-Sept., order volumes were 78, 49, 96, and 79, respectively).

²⁸⁴

See, e.g., BellSouth Georgia Louisiana Order, 17 FCC Rcd at 9090 n.494 (declining to find checklist non-compliance based upon BellSouth's failure to meet the benchmark for sub-metric B.1.4.14 (Reject Interval – Mechanized – Other Design) based on low order volumes).

UNE Mechanized Other Non-Design sub-metric, **as well as** for the other mechanized reject benchmarks.

92. In its root cause analysis, BellSouth identified the reasons for the missed mechanized reject benchmarks for all sub-metrics and took measures to improve its **performance**.²⁸⁵ For example, to prevent the recurrence of some untimely rejects, BellSouth restructured **ENCORE** mapping in Release **10.6**.²⁸⁶ In addition, BellSouth discovered that other untimely rejects were caused by the detection of errors after returning a Firm Order Confirmation (FOC) associated with working telephone numbers to the competitive LEC.²⁸⁷ BellSouth solved **this** problem in Release 10.7.1 on October 11, 2002 by checking the status of telephone numbers in additional databases before the FOC **is** returned to the competitive LEC. Although these solutions do not result in BellSouth meeting the applicable benchmarks, they improve significantly BellSouth's **performance**.²⁸⁸ Overall, we conclude that BellSouth's order rejection process meets the OSS requirements of section 271. Although not a factor in our decision here, it is reassuring that BellSouth continues to implement other solutions to improve its performance of mechanically processed reject notices." Should BellSouth's performance in this area deteriorate, we will pursue appropriate enforcement action.

(iii) Order Flow-Through Rate

93. We conclude that BellSouth's OSS are capable of flowing through UNE and resale orders in a manner that affords competing carriers a meaningful opportunity to **compete**.²⁹⁰ BellSouth's flow-through performance **has** improved since the BellSouth Georgia/Louisiana and Multistate applications." Specifically, BellSouth's flow-through data for **UNE** orders in recent

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BellSouth Vamer Aff., **Exs.** PM-2 at para. 40 and PM-3 at para. 39.

²⁸⁶

Release **10.6** was released on August 25, 2002. BellSouth explains that the interface to the EDI system is a file created by competitive LECs with the LSR ordering information. When a large file is received in EDI, the data must be mapped before any error checking can begin, resulting in delays to the start of error checking by 30 minutes or more. BellSouth states that the restructuring of ENCORE mapping enables more efficient processing of the data. BellSouth Vamer Aff., **Exs.** PM-2 at para. 40 and PM-3 at para. 39.

²⁸⁷

BellSouth Vamer Aff., **Exs.** PM-2 at para. **40** and PM-3 at para. 39.

²⁸⁸

For example, taking into account the restructuring of ENCORE mapping in Release **10.6**, BellSouth's performance for the UNE Mechanized Other Non-Design sub-metric in Tennessee in July improved to **86.68%**, bringing it closer to the 97% benchmark. See BellSouth Vamer Reply Aff., **Ex.** PM-27; see also Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-307 (filed Nov. 7, 2002) (BellSouth Nov. 7 **Ex Parte** Letter – #1).

²⁸⁹

BellSouth Vamer Aff., **Exs.** PM-2 at para. 40 and PM-3 at para. 39.

²⁹⁰

See Florida/Tennessee F.I.I.5 (% Flow Through Service Requests, UNE); Florida/Tennessee F.I.14 (% Flow – Through Service Requests, Business); Florida/Tennessee F.I.1.3 (% Flow – Through Service Requests, Residence).

²⁹¹

See Florida/Tennessee F.I.1.5 (% Flow – Through Service Requests, UNE); Florida/Tennessee F.I.1.4 (% Flow – Through Service Requests, Business); Florida/Tennessee F.I.1.3 (% Flow – Through Service Requests, Residence).

months show performance at or above the benchmark level,” and BellSouth’s resale **flow-through** performance has been improving steadily during the five-month period, reaching 90 percent in September for residential **orders**.²⁹³ Although we recognize that BellSouth has missed the **flow-through** benchmarks for resale orders, we find that BellSouth is in compliance with the checklist. Consistent with our prior section 271 orders, we find that other factors, in addition to the **flow-through** rate, such as a BOC’s overall ability to process accurately, manually handled orders, to return timely order confirmation and reject notices, and to scale its systems, are relevant and probative for analyzing a BOC’s ability to provide access to its ordering functions in a nondiscriminatory **manner**.²⁹⁵ As discussed above, BellSouth demonstrates that it provides timely order confirmation and reject notices. In addition, the evidence **of** record demonstrates that BellSouth accurately processes both manual and mechanized orders.²⁹⁶ Further, we find, **as** we have in previous BellSouth section 271 orders,²⁹⁷ that BellSouth scales its system as volumes increase, and has demonstrated its ability to continue to do so at reasonably foreseeable

²⁹²

While BellSouth missed the UNE flow-through benchmarks by small margins in May and June 2002, BellSouth met the benchmark in July, August, and September **2002**; its four month average (May-Sept.) is 86.94%, almost **two** percentage points above the 85% benchmark level. See Florida/Tennessee F.1.1.5 (% Flow – Through Service Requests). Even though BellSouth did not satisfy the KPMG evaluation criteria with respect to its processing of UNE order transactions in accordance with published flow-through rules (see KFMG Final Report at 387-88 (TVV3-2)), we find BellSouth’s recent commercial performance data establish its ability to flow through UNE orders in a nondiscriminatory manner.

²⁹³

See Florida/Tennessee F.1.1.3 – F.1.1.4 (% Flow – Through Service Requests). KPMG found that BellSouth systems process residential resale and UNE-Platform order transactions in accordance with published flow-through rules. See KFMG Final Report at 385-87 (TVV 3-1)

²⁹⁴

Florida/Tennessee F.1.1.3 (% Flow – Through Service Requests) (Residence) (May – 86.74%, June – 88.58%, July – 87.70%, Aug. – 89.52%, Sept. – 90.20%) (95% benchmark); Florida/Tennessee F.1.1.4 (% Flow – Through Service Requests) (Business) (May – 69.54%, June – 73.74%, July – 73.23%, Aug. – 76.17%, Sept. – 77.80%) (90% benchmark).

²⁹⁵

See, e.g., *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9092-93, para. 143; see also *Bell Atlantic New York Order*, 15 FCC Rcd at 4035, para. 162 (“[f]low through rates. . . are not so much an end in themselves, but rather **are** a tool used to indicate a wide range of possible differences in a BOC’s OSS that **may** deny an efficient competitor a meaningful opportunity to compete.”).

²⁹⁶

BellSouth met most of the performance benchmarks for resale and UNE-Platform service order accuracy. See Florida/Tennessee A.2.25 (Resale Service Order Accuracy – Regional); Florida/Tennessee B.2.34 (UNE Service Order Accuracy – Regional). All the resale and UNE-Platform performance levels fall within the general range of service order accuracy that the Commission stated was acceptable in the BellSouth *Multistate Order*. See *BellSouth Multistate Order*, 17 FCC Rcd at 17679, para. 159n.574. The eight sub-metrics that did not meet the 95% benchmark for **two** of three months between June and August represent only 0.4% of the total orders processed. See BellSouth Varner Reply Aff. at para. 72. BellSouth’s September data show that it continues to maintain a high degree of service order accuracy.

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See, e.g., *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9093, 9097, paras. 144, 152.

volumes.²⁹⁸ Should BellSouth's performance in this area deteriorate, we will pursue appropriate enforcement action.

94. We reject Mpower's claim that BellSouth's TAG is inefficient, requiring Mpower to use the more expensive and time consuming manual processes when it orders data circuits.²⁹⁹ As BellSouth points out, more than 65,000 orders were placed using TAG in August, 2002 alone.³⁰⁰ Not only has Mpower's usage of TAG increased steadily, but a high percentage of Mpower's data circuit orders submitted through TAG flowed through without manual intervention?" The record evidence thus undermines Mpower's claim that TAG is a "failed" system.³⁰²

95. We also reject Covad's assertion that BellSouth's OSS are deficient because BellSouth has not made fully mechanized ordering available for UCL-ND loops and ADSL loops that require conditioning.)" In the *BellSouth Georgia/Louisiana Order* and the *BellSouth Multistate Order*, the Commission held that electronic ordering of UCL-ND loops and ADSL-compatible loop or Line-Shared loops with conditioning was not a prerequisite for a finding of checklist compliance. In finding checklist compliance, the Commission pointed to the low volumes of orders for these products, BellSouth's willingness to automate the ordering of these products despite their low volumes, and the very high percentage of loops that can be ordered electronically. Undisputed record evidence shows that these same factors apply to this application.³⁰⁴ Covad presents no arguments that would cause us to reach a different determination in this proceeding. We note that BellSouth implemented electronic ordering of

²⁹⁸ See BellSouth Stacy Aff. at para. 430. We also note that the Florida Commission has taken steps to improve BellSouth's flow-through by requiring BellSouth to file a plan with that commission outlining its proposed steps to improve flow-through performance and by doubling the penalties under the SEEM plan when flow-through benchmarks are not met. Florida Commission Comments – OSS Test at 22.

²⁹⁹ Mpower Comments at 6-7.

³⁰⁰ BellSouth Reply at 22; BellSouth Stacy Reply Aff. at paras. 142-43.

³⁰¹ Id

³⁰² Mpower Comments at 7. We also find unpersuasive Mpower's claim that TAG is ineffective because the only way it can order service for a local customer with a new service address is to submit a manual order. Mpower Comments at 6. As BellSouth explained, manual processing in this situation is necessary only if Mpower does not perform the pre-ordering function and submits a request for service to a new address that does not reside in BellSouth's Regional Street Address Guide (RSAG) database. BellSouth Stacy Reply Aff. at para. 146. Moreover, the need for manual processing in this limited situation is not discriminatory because BellSouth personnel also must submit a manually processed order for a new address that is not in the RSAG database. See BellSouth Reply at 22; BellSouth Stacy Reply Aff. at para. 146. We note also that BellSouth has established processes for the identification of a "new address" condition and for the prompt resolution and population of new address information in RSAG. BellSouth Stacy Reply Aff. at para. 146.

³⁰³ Covad Comments at 17-24.

³⁰⁴ See BellSouth Stacy Aff. at paras. 406-11; BellSouth Reply at 20-21; BellSouth Stacy Reply Aff. at paras. 202-11 (citing confidential data).

UCL-ND on August 24, 2002.³⁰⁵ While not a factor in our analysis, we note further that BellSouth intends to implement full flow-through of UCL-ND loops on December 30, 2002 with OSS Release 11.0.³⁰⁶

96. While its arguments are not clear, Supra raises a number of concerns regarding BellSouth's OSS, none of which we find persuasive. First, Supra asserts that BellSouth's ordering systems are inadequate in that BellSouth's OSS cannot handle the volumes its retail systems can handle?" As noted above, the Commission has found consistently that BellSouth's OSS have the ability to handle competitive LEC orders in a nondiscriminatory manner, even as order volumes increase.³⁰⁸ Supra provides no record evidence that would cause us to reach a different conclusion in this proceeding. Supra next claims that LENS is deficient and does not provide competitive LECs with OSS functions in the same manner that BellSouth provides the same functions to itself?" Supra relies upon BellSouth's acknowledgement that LENS is a human-to-machine interface?" As BellSouth points out, however, BellSouth provides competitive LECs with two pre-ordering interfaces, LENS and TAG, and three ordering interfaces, LENS, TAG and EDI.³¹¹ The fact that Supra has made the business decision to use the human-to-machine interface, LENS, rather than the machine-to-machine alternatives (TAG and EDI) does not establish that BellSouth's OSS are discriminatory.³¹² The record evidence shows that BellSouth offers competitive LECs nondiscriminatory interfaces that can be integrated by the competitive LECs.³¹³

97. We also reject Supra's claim that LENS is discriminatory because "orders submitted from LENS are not error checked with any efficiency or completeness."³¹⁴ KPMG

³⁰⁵ See *BellSouth Multistate Order*, 17 FCC Rcd at 17676-77, para. 155; BellSouth Stacy Aff. at para. 406.

³⁰⁶ BellSouth Stacy Aff. at para. 406; BellSouth Stacy Reply Aff. at paras. 103-12. See BellSouth Nov. 7 *Ex Parte* Letter – #1 at 3; Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-307 at 14 (filed Nov. 1, 2002) (BellSouth Nov. 1 *Ex Parte* Letter – #2).

³⁰⁷ Supra Comments at 14.

³⁰⁸ See BellSouth Application at 70; *BellSouth Multistate Order*, 17 FCC Rcd at 17673-74, 17675, paras. 151, 153; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9097, para. 152.

³⁰⁹ Supra Comments at 14-16, 25. See also Arvanitas Reply at 7.

³¹⁰ Supra Comments at 19-20.

³¹¹ See, e.g., BellSouth Stacy Reply Aff. at para. 131.

³¹² See generally, *Bell Atlantic New York Order*, 15 FCC Rcd at 4014-16, paras. 130-32. Competitive LECs elect to use the LENS interface when they have made the business decision not to integrate pre-ordering, ordering and provisioning interfaces with their own internal OSS. See BellSouth Reply Stacy Aff. at para. 132.

³¹³ See, e.g., BellSouth Stacy Aff. at paras. 300-31.

³¹⁴ Supra Comments at 15.

found LENS to be a nondiscriminatory interface under criteria that included testing of both error-free transactions and transactions that included errors.” Moreover, since January 2000, LENS has used the TAG architecture and gateway and **has** essentially the same pre-ordering and ordering functionality for resale services and UNEs as TAG. Thus, when a competitive LEC submits a request **through** LENS, which sits atop the TAG system, it has the same on-line editing capabilities **as** a request submitted **through** TAG.³¹⁶ As a consequence, we disagree with Supra that “BellSouth **has** not implemented on-line edit checking in LENS.””

(iv) Other Ordering Issues

98. Parity in the Order Status Information Database. We do not agree with Network Telephone and WorldCom that BellSouth, through its Competitive LEC Service Order Tracking System (CSOTS),³¹⁸ has provided competitive LECs with discriminatory access to service orders, a necessary part of BellSouth’s OSS. First, we reject the claim of Network Telephone that there is a lack of parity because BellSouth retail representatives are able to view the status of orders on a real-time basis **through** SOCS whereas the CSOTS system, used by competitive LECs, is updated only on a daily basis.” As BellSouth explains, CSOTS provides competitive LECs with timely **status** order information by giving them real-time access to portions of the order that are likely to change during the course of the day, and daily updates to portions of the order not subject to change.” The Commission **has** never held that a competitive LEC must access the BOC’s OSS in the identical manner **as** does the BOC. Instead, the Commission has found that where a retail analogue exists, a BOC must provide access that is equal to (i.e., substantially the

³¹⁵ KPMG Fmal Report at 182-87 (TVV1-1-2, TVV 1-1-3). See BellSouth Stacy Reply Aff. at para. 136.

³¹⁶ See BellSouth Stacy Reply Aff. at para. 137.

³¹⁷ See Supra Comments at 15 n.16.

³¹⁸ Competitive LECs use CSOTS, **among** other things, to check the status of orders to ensure that they are being processed correctly. See Letter from Margaret H. Ring, Director, Regulatory and Governmental Affairs, Network Telephone, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-307 at 2-4 (filed Nov. 21, 2002) (Network Telephone Nov. 21 Ex *Parte* Letter); see *also* Letter from Keith L. Seat, Senior Counsel, Federal Advocacy, WorldCom, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-307 (filed Nov. 20, 2002) (WorldCom Nov. 20 Ex *Parte* Letter).

³¹⁹ Network Telephone Nov. 21 Ex *Parte* Letter at 2.

³²⁰ Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-307 at 1-2 (filed Nov. 22, 2002) (BellSouth Nov. 22 Ex *Parte* Letter – #2). BellSouth explains that CSOTS provides real-time access to orders in the following three categories that are subject to a change in status: (1) assignable orders (AO), service orders that have cleared the service order edit routine (SOER) edits and **are** ready to be assigned to a facility; (2) missed appointments (**MA**), service orders in which either BellSouth or the competitive LEC was unable to meet their commitment; and (3) pending facilities (PF), service orders in which facilities are unavailable or the assigned facility is defective. In contrast, **COSTS** provides daily updates for orders not subject to change, i.e., completed orders and orders in which facilities already have been assigned and the order is ready for work to be completed on the scheduled due date. BellSouth Nov. 22 Ex *Parte* Letter – #2 at 1-2.

same **as**) the level of access that the BOC provides itself, its customers, or its affiliates, in terms of quality, accuracy, and **timeliness**.³²¹ Access to CSOTS satisfies this requirement.

99. Second, we find that the operational problems associated with CSOTS during October and November 2002 do not warrant a finding of checklist **non-compliance**.³²² As BellSouth points **out**, when outages or degradations in CSOTS occur, competitive LECs have alternative ways to obtain timely **status** order information. For example, competitive LECs can obtain the status of orders, line loss information, and completion notices through the PON **status** report, the PF report, line loss report, and the EDI or LENS **interface**.³²³ While these types of electronic alternatives are not available for those orders that are subject to change during the day, we believe the competitive significance of this disparity is minimal. Such orders are less than one percent of the total number of competitive LEC orders, and competitive LECs, in any event, are able to get timely status information for these types of orders by calling the LCSC.³²⁴ Moreover, the record evidence shows that the outages and delays in CSOTS during October and November were caused by **an** unexpected **surge** in **demand**.³²⁵ At the end of November BellSouth installed a new server which eliminated the problems of outages and service degradation by increasing substantially the capacity of **CSOTS**.³²⁶ We find, therefore, that CSOTS provides competitive LECs with parity to BellSouth retail regarding the service order process, and that the recent operational problems with CSOTS do not diminish this parity. Accordingly, we conclude that BellSouth's provisioning of CSOTS is consistent with checklist item 2. Should BellSouth's performance in this area deteriorate, however, we will pursue appropriate enforcement action.)"

³²¹ *Bell Atlantic New York Order*, 15 FCC Rcd at 3971-72, para. 44; *Ameritech Michigan Order*, 12 FCC Rcd at 20618-20, paras. 139-41.

³²² We find that CSOTS performance generally was satisfactory prior to October 2002. The record evidence shows that the number of service degradation or outages in CSOTS in each month from January to September 2002 was very small **and** that the overall availability level of CSOTS **during** this time period **was** 95.82%. BellSouth Nov. 22 Ex *Parte* Letter – #2 at 3.

³²³ BellSouth Nov. 22 Ex *Parte* Letter – #2 at 2, 4.

³²⁴ *Id.* The answering time for calls to the LCSC averages less than one minute. *Id.* at 4.

³²⁵ According to BellSouth, a single Competitive LEC in October and November increased its CSOTS query volume by more than 55%. Queries **from** this single carrier accounted for about 80% of all CSOTS queries. Because that competitive LEC currently is involved in a bankruptcy proceeding, BellSouth was unable to limit that carrier's access to **CSOTS** without approval of the bankruptcy *court*. *Id.* at 3.

³²⁶ Letter from Kathleen B. Levih, Vice President – Federal Regulatory, BellSouth, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-307 (filed Nov. 25, 2002) (BellSouth Nov. 25 Ex *Parte* Letter – #1). **See also** Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-307 (filed Dec. 6, 2002) (BellSouth Dec. 6 Ex *Parte* Letter – #6).

³²⁷ We agree with BellSouth that the installation of a new server does not require use of the change control process since it is an infrastructure change that is not competitive LEC-affecting. BellSouth Nov. 22 Ex *Parte* Letter – #2. We note that BellSouth acknowledges that the long term solution is a platform upgrade, which will require moving a Network Telephone platform to a SUN/Solaris platform and away **from** Navigator to XML. **See** Network Telephone (continued...)

100. *Parity in the Ordering of Line-Shored Loops.* We reject Covad's assertions that BellSouth's OSS are discriminatory because BellSouth allegedly permits Internet service providers (ISPs) reselling its line-sharing service to a customer to use a streamlined "to-and-from" ordering procedure that is unavailable to competitive LECs.³²⁸ BellSouth has not yet implemented such an ordering procedure and has made clear that it will not implement this functionality until after a comparable feature is put in place for competitive LECs."

101. We again reject Mpower's claim that BellSouth unlawfully discriminates against competitive LECs by requiring them to use multiple LSRs and customer service records (CSRs) for orders and accounts with multiple lines that BellSouth's retail division has on a single account on one bill.³³⁰ The Commission, in rejecting the identical claim in the *BellSouth Georgia/Louisiana Order*, found insufficient evidence that BellSouth's practice impedes a competitive LEC's ability to compete in a meaningful manner." Mpower presents no new evidence on the record before us that would cause us to reconsider that finding.

102. *Information Regarding Facilities.* We find that BellSouth provides facilities information accurately and in compliance with the checklist despite Mpower's complaints to the contrary. Alleging that BellSouth cannot provide accurate facilities information to competitive LECs before the day of cutover, Mpower complains that it must order new loops and have them installed before the customers' move-in date." BellSouth acknowledges that its facilities database is not perfect, and that an inaccuracy may not be found until the installer attempts to test the loop pair from the end user's premises on the due date. BellSouth asserts, however, that any inaccuracies in the database affect BellSouth and the competitive LECs equally, so there is no

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Nov. 21 *Ex Parte* Letter at 3. We note further that BellSouth has agreed to keep the competitive LECs informed about the progress of the changes in CSOTS through the change control process. BellSouth Nov. 22 *Ex Parte* Letter – #2 at 4.

³²⁸ See Covad Comments at 6-8. A "to-and-from" order allows a vender to place an order transferring service from one address to another as soon as its customer has asked to have his voice service transferred. Without the availability of a "to-and-from" order, the vender must disconnect the customer's lie shared loops and then wait until voice service is fully provisioned at the new address before placing a new order to establish lie-shared loops.

³²⁹ BellSouth Reply at 20; BellSouth Stacy Reply *Aff.* at paras. 187-91. We also reject Covad's claim that BellSouth requires competitive LECs, when ordering lie-shared loops, to validate the identity of the customer by telephone number and address, while it uses telephone validation only in processing a customer order for its own lie sharing service. See Covad Comments at 5-6. As BellSouth explains, Release 10.3.1, which was placed into production on February 2, 2002, included a feature that enables competitive LECs to place lie sharing orders without the need for address validation. Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-307 (filed Dec. 13, 2002); Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-307 (filed Dec. 16, 2002).

³³⁰ See Mpower Comments at 10.

³³¹ *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9107-08, para. 165.

³³² Mpower Comments at 11-12.

issue of discrimination or parity.³³³ We agree. Our rules do not require incumbent LECs to ensure the accuracy of their loop qualification databases. Rather, our rules require that incumbent LECs provide competitive LECs with nondiscriminatory access to those ~~databases~~.³³⁴

103. Local Carrier Service Center Procedures. We reject Mpower's claim that BellSouth's policies and procedures governing calls into BellSouth's ordering center, the Local Carrier Service Center ("LCSC") that require escalation, are inefficient and result in substantial delays for competitive LECs that BellSouth's retail operations do not encounter?" BellSouth, in sworn testimony, disputes the factual accuracy of Mpower's description of its **policy**.³³⁶ Moreover, BellSouth's ~~claim~~ that its policies and procedures governing LCSC calls are fair and nondiscriminatory is independently corroborated by KPMG's Florida third-party test.³³⁷ We also note that Mpower failed to provide any specific examples of delays and inefficiencies it **has** incurred in making calls to the LCSC that required escalation. Based upon the record evidence showing that most of Mpower's calls are resolved by the LCSC representative without need for the intervention of an escalation manager," we find that any problems that Mpower may have encountered appear to have been isolated incidents. They do not, in our view, reflect a systemic deficiency in the way BellSouth responds to LCSC calls.

e. Provisioning and Maintenance & Repair

104. Based ~~on~~ the evidence in the record, we find, ~~as~~ did the state **commissions**,³³⁹ that BellSouth provisions competitive LEC customers' UNE-Platform and resale orders in substantially the same time and manner ~~as~~ it provisions orders for its own retail customers. In

³³³ BellSouth Stacy Reply Aff. at para. 154.

³³⁴ *See BellSouth Multistate Order*, 17 FCC Rcd at 17667, para. 142.

³³⁵ *See* Mpower Comments at 11.

³³⁶ Mpower and BellSouth agree that, if the LCSC representative answering the call cannot help with a problem, the caller is told a manager will return the call. Mpower complains, however, that if the competitive LEC representative is not at his or her desk when the call is returned, the manager leaves a message to call the main number again, requiring the competitive LEC to **start** the process over again. BellSouth disputes Mpower's claim. According to BellSouth, when a call to its LCSC requires escalation, the escalation manager calls the competitive LEC within an hour, **after** taking time to research the issue and to ensure that the information that will be given to the competitive LEC is accurate. If the competitive LEC representative **does** not answer the call, BellSouth states that the escalation manager leaves a message that includes ~~his~~ or her specific contact number. BellSouth Application Reply App., Tab A, Reply Affidavit of Ken L. Ainsworth (BellSouth Ainsworth Reply Aff.) ~~at~~ para. 5.

³³⁷ *See* KPMG Final Report at 153-165 (PPR8-1 to PPR8-14).

³³⁸ BellSouth Ainsworth Reply Aff., Ex. KLA-1 (*citing confidential data*).

³³⁹ Florida Commission Comments – OSS Test at 4748; Tennessee Authority Comments at 29.

addition, we find that BellSouth provides nondiscriminatory access to maintenance and repair OSS functions.³⁴⁰

105. We reject AT&T's assertion that BellSouth fails to satisfy checklist item 2 because it requires AT&T to treat certain maintenance and repair requests as provisioning requests.'" Specifically, AT&T argues that if service to one of its end users were to be disrupted because of a problem on AT&T's side of the collocation facility, BellSouth would require AT&T to send a loop provisioning order to BellSouth, rather than a maintenance request.'" According to AT&T, provisioning requests take longer and **are** more expensive than maintenance requests, thus causing AT&T unnecessary time and expense?'" BellSouth states, however, that its policy is appropriate and is meant to ensure accuracy, and thus reduces maintenance issues. According to BellSouth, the scenario posited by AT&T rarely, if ever, happens, but if or when it does, BellSouth states that it is imperative that competitors submit an LSR so that the carriers' databases reflect the correct connecting facility assignment.'" AT&T does not dispute that **this** scenario is an extremely rare occurrence. Given the lack of any record evidence contradicting BellSouth's position, **this** issue does not appear to be a systemic problem. Accordingly, we find that the impact of BellSouth's policy on its competitors is minimal. BellSouth's policy complies with checklist item 2. Although not a factor in our decision here, we note that BellSouth is working on a maintenance process that addresses **this** situation, which gives us confidence that BellSouth will continue to comply with checklist item 2 in the **future**.³⁴⁵

³⁴⁰

See generally Florida/Tennessee A.2.1.1.1.1– A.2.1.1.2.2 (Order Completion Interval, Residence); Florida/Tennessee B.2.1.3.1.1 – B.2.1.3.2.4 (Order Completion Interval, Loop + Port Combinations); Florida/Tennessee A.3.1 (% Missed Repair Appointments); A.3.3 and B.3.3 (Maintenance Average Duration); A.3.4 and B.3.4 (% Repeat Troubles within 30 Days); and A.3.5 and B.3.5 (% Out of Service More than 24 Hours); see generally Appendix D.

³⁴¹

AT&T Comments at 20-21; AT&T Comments, Tab C, Declaration of Denise Berger (AT&T Berger Decl.) at paras. 16-19. AT&T also asserts that BellSouth's policy violates checklist item 4. We address fully AT&T's argument in this section; accordingly, we do not need to discuss it further in our analysis of checklist item 4. In addition, AT&T's complaints about BellSouth's expedite fees in the pricing section relates to this issue. See *supra* Part IV.B.1.b.ii.

³⁴²

AT&T Comments at 20-21; AT&T Berger Decl. at paras. 16-19. We note that AT&T provides **no** evidence of an actual occurrence.

³⁴³

AT&T Comments at 20-21; AT&T Berger Decl. at paras. 16-19

³⁴⁴

BellSouth Reply at 21; BellSouth Ainsworth Reply Aff. at paras. 19-20 (*citing confidential information*).

³⁴⁵

BellSouth explains that the new process will link the maintenance request with the necessary provisioning work, ensure that maintenance requests are handled in a timely manner, and keep the database records up-to-date. **Thus**, BellSouth asserts that while its current process is already compliant with its Section 271 obligations, it is willing to work with the competitive LECs. See BellSouth Ainsworth Reply Aff. at para. 20.

106. *Quality Service Problems.* We reject the arguments of AT&T and WorldCom that BellSouth's alleged failure to implement single "C" orders" for UNE-Platform partial conversions warrants a finding of checklist non-compliance. According to AT&T and WorldCom, BellSouth has implemented single "C" orders only for full migrations of service." These parties claim ~~that~~, by continuing to use two separate orders for partial migrations, BellSouth has failed **to** eliminate completely the problems with service outages associated with UNE-Platform conversions. BellSouth responds that inherent limitations on the way accounts, sub-accounts and account structures can be manipulated make it is impossible to develop a single "C" order for partial **migrations**.³⁴⁸ In addition, BellSouth denies that the existing two-order system creates significant service order processing problems.)" We **are** unpersuaded that the lack of single "C" orders for partial migrations establishes that BellSouth fails to provision competitive LEC orders in a nondiscriminatory manner. Consistent with the BellSouth Georgia/Louisiana Order, we hold that BellSouth's OSS provide nondiscriminatory access to its provisioning systems and processes without regard to the manner in which it implements single "C" ordering." The Commission in the BellSouth Georgia/Louisiana Order found that the problems associated with BellSouth's two-order system for UNE-conversion were exaggerated and affected only a small percentage of orders.³⁵¹ The evidence of record in **this** proceeding likewise establishes that BellSouth's performance on UNE-Platform conversions is satisfactory. For example, BellSouth processed **99.88** percent of the UNE-Platform conversions in August and September 2002 without a service order-related outage.³⁵² While BellSouth's **98.5** percent performance rate relating specifically **to** partial migration was slightly lower ~~than~~ its overall performance ~~rate~~," we find that the isolated problems relating to partial migration service orders are not competitively significant. **As** BellSouth points out, only 22 of the **1,457** partial migration service orders in August and September 2002 had out of service problems related to

³⁴⁶ Competitive LECs claimed that BellSouth's use of separate "D" and "N" orders caused outages when not processed in the proper sequence. The use of a single "C" order, which replaces the separate "D" and "N" orders, is designed **to** prevent such outages. **See** AT&T Nov. 19 *Ex Parte* Letter at 1-2.

³⁴⁷ Letter from Alan C. Geolot, Counsel to AT&T, **to** Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. **02-307** at **12-14** (filed Nov. **13,2002**) (AT&T Nov. **13** *Ex Parte* Letter - **OSS**) and Attach.(AT&T Supplemental Berger Decl.); WorldCom Nov. **20** *Ex Parte* Letter at **5**.

³⁴⁸ Letter from Kathleen B. Levitz, Vice President - Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. **02-307** at **8** (filed Nov. **20,2002**) (BellSouth Nov. **20** *Ex Parte* Letter - **#1**).

³⁴⁹ *Id.* at 9.

³⁵⁰ *BellSouth Georgia/Louisiana Order*, 17 FCC Red at 9110, para. **167**.

³⁵¹ *Id.*

³⁵² Letter **from** Kathleen B. Levitz, Vice President - Federal Regulatory, BellSouth, **to** Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. **02-307** (filed **Dec. 6,2002**) at **2** (BellSouth Dec. **6** *Ex Parte* Letter - **#1**).

³⁵³ *Id.*

conversions.³⁵⁴ Moreover, it took BellSouth less time to correct these troubles than it took BellSouth to correct troubles with its retail accounts during the same period?” Should BellSouth’s performance in this area deteriorate, we will pursue appropriate enforcement action.

f. Billing

107. Like the state **commissions**,³⁵⁶ we reject competitive LECs’ contentions that BellSouth fails to provide nondiscriminatory access to its billing system.” In reaching **this** determination, we find it significant that commenters neither raise new claims nor provide new supporting evidence to claims already squarely dismissed by the Commission in the *BellSouth Multistate Order*.”

g. Change Management

108. We conclude, **as** did the state commissions, that BellSouth meets the requirements of checklist item 2 with regard to change management **in** Florida and **Tennessee**.³⁵⁹ The record in this proceeding shows that BellSouth’s change control process, and its performance under this process, is comparable to, if not better than, BellSouth’s performance in the *BellSouth Georgia/Louisiana Order* and the *BellSouth Multistate Order*. We have carefully scrutinized this process, heedful of the Department of Justice’s attention to **this** issue.

109. We find, **as** did the Department of Justice, that following the release of **our** prior two orders, BellSouth **has** continued to improve the adequacy of its change control plan by providing competitors with more information and input into the change control **process**.³⁶⁰ We

³⁵⁴ BellSouth **Nov. 20** Ex *Parte* Letter – #1 at 9.

³⁵⁵ BellSouth Dec. **6** Ex *Parte* Letter – #1 at 2.

³⁵⁶ Florida Commission Comments – OSS Test at **48-49**; Tennessee Authority at 30.

³⁵⁷ See Mpower Comments at **14**; Covad Comments at **12-14**; and Supra Comments at **29-31**

³⁵⁸ See *BellSouth Multistate Order*, 17 FCC Red at **17689-92**, paras. **174-77**.

³⁵⁹ Florida Commission Comments – OSS Test at **53-57**; Tennessee Authority Comments at **30**; Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket **No. 02-307** at **1** (filed Nov. **8, 2002**) (BellSouth **Nov. 8** Ex *Parte* Letter – #3).

³⁶⁰ Department of Justice Comments at 6. According to BellSouth, the following enhancements have been made to the change control process: BellSouth has adopted the competitive LECs’ definition of “[competitive] LEC affecting change.” BellSouth will also give competitors approximately **80%** of **2003** production capacity instead of the **50%** to which they are entitled under the plan approved by the Florida and Georgia Commissions. See BellSouth Reply at **9**; BellSouth Stacy Reply Aff. at para. 11. In addition, in October **2002**, BellSouth adopted the competitive LEC option for a **2003** release schedule. See *id.* BellSouth has also continued to work with competitive LECs under the close supervision of the Florida and Georgia Commissions. These meetings have resulted in numerous improvements to the change control process. For instance, **as** of August **31, 2002**, BellSouth has implemented **538** change requests (which include regulatory mandates, industry standard changes, BellSouth- and competitive LEC-initiated requests, and defects). See BellSouth Stacy Aff. at para. **184**. In addition, BellSouth has already (continued...)

believe that it is essential for BellSouth to continue to work collaboratively with competitive LECs through the change control process on prioritization issues, provide competitive LECs with sufficient information to be able to make informed decisions regarding prioritization of proposed systems changes, and implement changes in a timely manner.³⁶¹ As discussed below, we first assess the adequacy of BellSouth's change management plan, and then evaluate whether BellSouth has demonstrated that it adheres to its plan.

(i) Adequacy of the Change Management Plan

110. ***Change Management Plan Organization.*** Based upon our examination of the record, we find that BellSouth's change control process is adequate to provide competitive LECs with access to BellSouth's OSS.³⁶² For example, we note that BellSouth has taken significant remedial action in response to KPMG's findings that some portions of its change control process did not provide competitive LECs with sufficient information.³⁶³ Many of these improvements had been developed and presented to KPMG, but were not implemented while KPMG testing was still in progress. As a result, KPMG states in its Final Report that based upon BellSouth's improvements, KPMG would have closed out its exceptions, but for the fact that it could not observe BellSouth's implementation.³⁶⁴ As discussed below, however, we find that BellSouth has adequately implemented these revisions, and, accordingly, the concerns raised in KPMG's Final Report should be resolved.

111. ***Competing Carrier Input, Adequate Dispute Resolution Process, Testing Environment, and Documentation Adequacy.*** Competitors in Tennessee and Florida use the same processes and systems that we reviewed and approved in both the *BellSouth*

(Continued from previous page)

implemented at least 9 of the competitive LECs' Top 15 change requests, and it intends to implement at least 14 of them by the end of December 2002. See *BellSouth Multistate Order*, 17 FCC Rcd at 17704-05, para. 194; BellSouth Reply at 9; BellSouth Stacy Reply Aff. at para. 13. Finally, BellSouth has expanded the availability of the pre-release testing environment, the Competitive LEC Application Verification Environment (CAVE), established a testing web-site, broadened the test case catalog, and enhanced competitive LEC participation through a "go/no go" recommendation process. See BellSouth Reply at 10; BellSouth Stacy Reply Aff. at paras. 33-39.

³⁶¹ The Commission has expressed this same expectation in prior orders. See *BellSouth Multistate Order*, 17 FCC Rcd at 17693, para. 179; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9128-30, paras. 193-95.

³⁶² See *BellSouth Multistate Order*, 17 FCC Rcd at 17694-96, paras. 181-82; see also BellSouth Stacy Aff. at paras. 137-38, 199-204, Ex. WNS-26 (BellSouth Change Control Process, Version 3.2, July 29, 2002).

³⁶³ KPMG Final Report at 34-36, 40-41.

³⁶⁴ Id. at 41.

Georgia/Louisiana Order and the *BellSouth Multistate Order*.'" Nothing on the record in this proceeding causes us to make a different determination **here**.³⁶⁶

(ii) Adherence to the Change Management Process

112. **Accepting Change Requests.** We find that BellSouth is complying with checklist item 2 by adequately accepting its competitors' change requests in Florida and Tennessee.³⁶⁷ BellSouth states that from June to September 2002, it has met the 10-day deadline for either accepting or rejecting change requests for 22 of the 23 change requests that competitive LECs have submitted.'" As noted in the *BellSouth Multistate Order*, BellSouth has now implemented two new region-wide performance metrics adopted by the Florida Commission that measure BellSouth's handling of change requests: CM-7 measures BellSouth's adherence to the 10-day change control process deadline, and CM-8 measures how many change requests are denied by BellSouth for any of the reasons allowed under the change control process.'" For the months of August and September, the first two months for which data under these metrics was available, BellSouth met the relevant benchmarks.'"

113. **Implementation of Prioritized Change Requests.** BellSouth's implementation of competitive LEC prioritized changes complies with checklist item 2, and BellSouth has continued to make progress in providing information to competitive LECs **through** its change

³⁶⁵ See *BellSouth Multistate Order*, 17 FCC Rcd at 17694-701, paras. 181-89; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9118-27, paras. 180-191.

³⁶⁶ AT&T asserts that BellSouth's 50/50 plan was unilaterally imposed on the competitors by BellSouth. See AT&T Comments Tab A, Declaration of Jay M. Bradbury at para. 8 (AT&T Bradbury Decl.). The Commission, however, previously rejected this argument in the *BellSouth Multistate Order*, and AT&T provides no new evidence in this record. See *BellSouth Multistate Order*, 17 FCC Rcd at 17698-99, para. 185.

³⁶⁷ As explained in the *BellSouth Multistate Order*, when a feature change request is submitted by a competitive LEC, BellSouth has 10 days to accept or reject the request. BellSouth can reject competitive LEC change requests based on cost, industry direction and technical infeasibility. BellSouth must provide competitive LECs with a rationale for its decisions, and competitive LECs can appeal BellSouth's decision, **using** either **the** escalation process or by filing a complaint with a regulatory body. If a change request is accepted, the request is then submitted to competitive LECs for prioritization, *i.e.*, a competitive LEC **ranking** of how important the change request is, which determines how soon it will be implemented. See *BellSouth Multistate Order*, 17 FCC Rcd at 17706, para. 197 n. 759.

³⁶⁸ BellSouth Reply at 9; BellSouth Stacy Reply Aff. at para. 16. BellSouth's June to September performance is better than its performance during the months of March to June 2002, the period during which its five-state application was pending. At the time of the five-state application, BellSouth only timely accepted 10 of 13 submitted change requests. See BellSouth Stacy Reply Aff. at para. 16. The ten-day period has been part of the change control process since September 2001. See *id* at para. 15.

³⁶⁹ See *BellSouth Multistate Order*, 17 FCC Rcd at 17702-03, para. 191

³⁷⁰ See Florida/Tennessee F.IO.10 (%Change Requests Accepted or Rejected Within 10 days), and Florida/Tennessee F.IO.11 (%Change Requests Rejected). Currently, CM-8 (F.IO.11) is a diagnostic measure. BellSouth Stacy Aff. at para. 196.

control process.” We have previously recognized that the implementation of OSS changes is inherently a slow-moving process, and is seriously constrained by capacity limits and architecture.” Accordingly, we have looked to evidence that a BOC has committed to OSS feature changes that incorporate an adequate number of competitors’ backlogged change requests. Evidence of this type indicates that the BOC is adhering to the plan and taking the process seriously.

114, In the instant proceeding, we find that although there is a backlog of competitive LEC prioritized changes, the backlog is smaller than it was at the time of the BellSouth *Multistate* Order, and BellSouth has scheduled many of the competitive LEC requests to be implemented in upcoming scheduled releases.³⁷³ Moreover, BellSouth states that based upon decisions made in past meetings with the competitive LEC community, it will implement at least 14 of the competitive LECs’ top 15 change requests by the end of 2002.³⁷⁴ Moreover, BellSouth asserts, and WorldCom concedes,” that most of the competitive LEC change requests prioritized in September 2002 for the 2003 release schedule will be implemented in the 2003 releases.³⁷⁶ In fact, BellSouth explains that it **has** provided approximately 80 percent of the 2003 production capacity to its competitors, instead of the 50 percent to which they are entitled under its change control process.” **This** type of action was encouraged by the Commission to ensure that competitive LEC requests are implemented **as** quickly **as** possible, and thus reverse the trend of backlogging change requests.” BellSouth has **also** implemented a new, region-wide performance metric (CM-11) adopted by the Florida Commission that measures BellSouth’s ability to implement prioritized change requests within 60 weeks of their prioritization and imposes penalties if BellSouth fails to meet the **deadline**.³⁷⁹ Based upon the evidence in the record before us, we find that BellSouth continues to make strides to address its existing backlog, and that its performance in this area **has** improved following the Commission’s grant of BellSouth’s prior applications. Accordingly, we find BellSouth to be compliant with checklist item 2.

³⁷¹ Department of Justice Comments at 6.

³⁷² See *BellSouth Multistate Order*, 17 FCC Rcd at 17703-04, para. 193.

³⁷³ At the time of the *BellSouth Multistate Order*, there were 63 backlogged change requests. *BellSouth Multistate Order*, 17 FCC at 17704, para. 193. In the instant proceeding, the record shows that there are a total of 57 change requests in the backlog. See *BellSouth Stacy Aff.* at paras. 143, 186.

³⁷⁴ *BellSouth Stacy Reply Aff.* at para. 13.

³⁷⁵ *WorldCom Comments* at 2-3.

³⁷⁶ *BellSouth Reply* at 3; *BellSouth Stacy Reply Aff.* at para. 49.

³⁷⁷ *BellSouth Stacy Aff.* at para. 11. AT&T contests this percentage. See *infra* at para. 124 for a discussion

³⁷⁸ *BellSouth Multistate Order*, 17 FCC Rcd at 17705-06, para. 196.

³¹⁹ *BellSouth Stacy Aff.* at para. 196. CM-I1 tracks the number of prioritized change requests that are actually implemented within 60 weeks of their prioritization, and it requires a 95% interval success rate.

115. Despite these improvements, competitive LECs continue to express concerns about the backlog of change requests awaiting implementation, BellSouth's adherence to its change management process, and the quality of BellSouth's software releases (i.e. number of defects). We consider each of these concerns in turn and, for the reasons indicated below, we find that the record demonstrates checklist compliance.

(a) **Timely Implementation of Change Requests and Allocation of Release Capacity**

116. We conclude that BellSouth implements competitive LECs' change requests in a timely manner. We disagree with AT&T's allegations to the contrary. AT&T alleges that BellSouth has poorly managed the change control process, as evidenced by, among other things, BellSouth's improper projections regarding the implementation of a fully-automated EDI pre-ordering interface and migration from ENCORE to IDN.³⁸⁰ AT&T also alleges that BellSouth has not reduced the backlog of feature and defect change requests because AT&T believes that competitors may have to wait 2 to 3 years to have these changes implemented.³⁸¹ We are not persuaded by either of these allegations. First, we find that much of AT&T's criticism is centered on BellSouth's decision to change its 2003 release plan, which affected initial projections. We note, however, that BellSouth was required to make this decision in order to comply with a Florida Commission order directing BellSouth to file a plan showing how it would implement all prioritized changes within 60 weeks.³⁸² As we have previously recognized, OSS changes such as these are difficult to implement.³⁸³ Thus, to comply with the directive of the Florida Commission, BellSouth was confronted with the difficult task of recalibrating projected OSS changes in the face of a newly-imposed deadline. We find that any problems with BellSouth's projected schedule are more the result of complexities arising out of its attempt to comply with the state commission-imposed deadline, rather than mismanagement and lack of dedicated resources.³⁸⁴ Second, we do not agree with AT&T on the age of BellSouth's backlog. We find that AT&T began its calculations at the time when the change requests were first submitted, rather than when they were actually prioritized. By improperly calculating the age of the unimplemented change requests, AT&T gives the incorrect impression that the prioritized change requests are older than is actually the case.³⁸⁵ Although not a basis for our decision here,

³⁸⁰ See AT&T Comments at 11-12; AT&T Bradbury Decl. at paras. 29-31.

³⁸¹ AT&T Comments at 10; AT&T Bradbury Decl. at paras. 26-40; AT&T Reply at 9-13; AT&T Reply, Reply Declaration of Jay M. Bradbury at paras. 9-21 (AT&T Bradbury Reply Decl.). We address AT&T's allegations about BellSouth's backlog of software defects changes below.

³⁸² BellSouth Stacy Reply Aff. at paras. 49-50.

³⁸³ *BellSouth Multistate Order*, 17 FCC Rcd at 17703-04, para. 193.

³⁸⁴ In 2003, BellSouth will spend approximately \$108 million and devote 300,000 programmer hours to change management issues, and, as mentioned above, will provide competitive LECs with 80% of production capacity for 2003. See BellSouth Stacy Reply Aff. at para. 42.

³⁸⁵ BellSouth Reply at 12; BellSouth Stacy Reply Aff. at para. 76. The Florida Commission established the business rules for CM-11, which starts the 60-week period at the time when a change request is prioritized by all the (continued....)

given that BellSouth has dedicated significant time and resources to scheduling the implementation of competitors' prioritized changes for the upcoming 2003 releases, we expect that BellSouth will have little difficulty in complying with CM-11, and we are satisfied with the progress BellSouth has made so far. Furthermore, we are encouraged by the fact that state commissions continue to oversee improvements to BellSouth's change control process, and may impose penalties if BellSouth fails to meet required benchmarks and parity standards.

117. We also reject Covad's assertions that BellSouth corrects problems affecting its own retail operations quicker than it does for competitors. In support of its claim, Covad provides one example. It states that on January 18, 2002, it submitted a change request (CR0621), and that it took BellSouth 6 months to take effective action. On the other hand, Covad alleges that BellSouth quickly acted upon a similar defect (CR0766) that affected BellSouth's own operations.³⁸⁶ We find that even if true, the record shows that BellSouth was justified in its treatment of Covad's change request because the change requests were not similar. BellSouth had to perform substantially more work to identify and resolve the issues in Covad's change request.³⁸⁷ In contrast, BellSouth's change request was for a known line number portability (LNP) defect, capacity for such a change was identified in an upcoming release, and the change itself required significantly less work.³⁸⁸ Therefore, based upon the evidence in the record, we find that BellSouth's actions neither violate the change control process nor checklist item 2. However, we note that BellSouth may not have communicated with Covad as well as it could have about the status of its change request, which is a separate issue we address below.

(b) Adherence to the Prioritization Process

118. We find that BellSouth adheres to the competitive LEC prioritization of their change requests.³⁸⁹ The record does not support the arguments made by AT&T, Network

(Continued from previous page) _____
participating competitive LECs, not at the time when the change request is first submitted. See BellSouth Stacy Reply Aff. at para. 76.

³⁸⁶ See Covad Comments at 15-17.

³⁸⁷ See BellSouth Reply at 16; BellSouth Stacy Reply Aff. at paras. 196-201.

³⁸⁸ Id

³⁸⁹ As explained in the *BellSouth Multistate Order*, after BellSouth validates a change request, competitive LECs jointly prioritize change requests using information BellSouth provides about the approximate size of each change request feature and estimates of available capacity in future releases. BellSouth then internally reviews the prioritization and sequences change requests beginning with the top priority request. Under the 50/50 release plan, BellSouth has its own releases and competitive LECs have their own releases. The plan first requires implementation of all regulatory mandates, all needed industry standard updates, and all scheduled repairs to fix defects. After those changes are implemented, competitive LECs and BellSouth share equally the remaining release capacity for the year. BellSouth schedules its change requests and shows competitive LECs the changes it had initiated and intends to implement. Likewise, competitive LECs prioritize their change requests, and these are slotted for implementation in competitive LEC releases. BellSouth and competitive LECs each have the right to prioritize the features in their releases. See *BellSouth Multistate Order*, 17 FCC Rcd at 17696-98, para. 184; see also BellSouth Stacy Aff., Ex. WNS-26 (BellSouth Change Control Process) at 3342.